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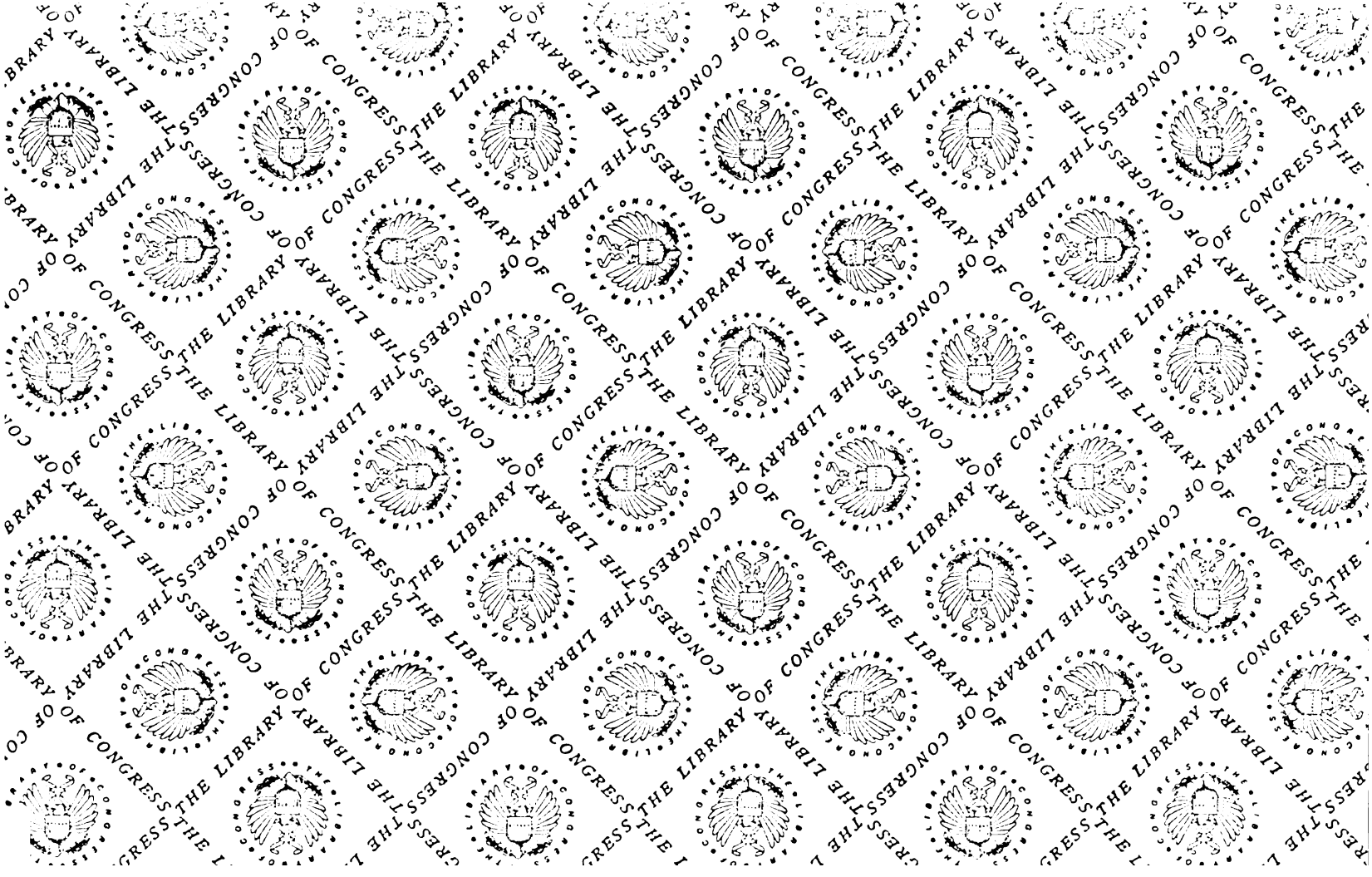
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ARBITRATION IN CONTROVERSIES BETWEEN EMPLOYERS AND EMPLOYEES

HEARINGS

BEFORE THE

COMMITTEE ON INTERSTATE COMMERCE UNITED STATES SENATE

ON

S. 2517

A BILL PROVIDING FOR MEDIATION, CONCILIATION, AND ARBITRATION IN CONTROVERSIES BETWEEN CERTAIN EMPLOYERS AND THEIR EMPLOYEES

FRIDAY, JUNE 20, 1913

PART 1

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ARBITRATION IN CONTROVERSIES BETWEEN EMPLOYERS AND EMPLOYEES.

FRIDAY, JUNE 20, 1913.

COMMITTEE ON INTERSTATE COMMERCE,
UNITED STATES SENATE,
Washington, D. C.

The committee met at 10 o'clock a. m. for the purpose of considering the bill (S. 2517) providing for mediation, conciliation, and arbitration in controversies between certain employers and their employees, as follows:

A BILL Providing for mediation, conciliation, and arbitration in controversies between certain employers and their employees.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this act shall apply to any common carrier or carriers and their officers, agents, and employees, except masters of vessels and seamen, as defined in section forty-six hundred and twelve, Revised Statutes of the United States, engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, for a continuous carriage or shipment from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

The term "employees" as used in this act shall include all persons actually engaged in any capacity in train operation or train service of any description, and notwithstanding that the cars upon or in which they are employed may be held and operated by the carrier under lease or other contract: *Provided, however,* That this act shall not be held to apply to employees of street railroads and shall apply only to employees engaged in railroad train service. In every such case the carrier shall be responsible for the acts and defaults of such employees in the same manner and to the same extent as if said cars were owned by it and said employees directly employed by it, and any provisions to the contrary of any such lease or other contract shall be binding only as between the parties thereto and shall not affect the obligations of said carrier either to the public or to the private parties concerned.

A common carrier subject to the provisions of this act is hereinafter referred to as an "employer," and the employees of one or more of such carriers are hereinafter referred to as "employees."

SEC. 2. That whenever a controversy concerning wages, hours of labor, or conditions of employment shall arise between an employer or employers and employees subject to this act interrupting or threatening to interrupt the business of said employer or employers, to the serious detriment of the public interest, either party to such controversy may apply to the Board of Mediation and Conciliation created by this act and invoke its services for the purpose of bringing

about an amicable adjustment of the controversy; and upon the request of either party the said board shall, with all practicable expedition, put itself in communication with the parties to such controversy and shall use its best efforts, by mediation and conciliation, to bring them to an agreement; and if such efforts to bring about an amicable adjustment through mediation and conciliation shall be unsuccessful, the said board shall at once endeavor to induce the parties to submit their controversy to arbitration in accordance with the provisions of this act.

In any case in which an interruption of traffic is imminent and fraught with serious detriment to the public interest the Board of Mediation and Conciliation may, if in its judgment such action seem desirable, proffer its services to the respective parties to the controversy.

In any case in which a controversy arises over the meaning or the application of any agreement reached through mediation under the provisions of this act either party to the said agreement may apply to the Board of Mediation and Conciliation for an expression of opinion from such board as to the meaning or application of such agreement, and the said board shall, upon receipt of such request, give its opinion as soon as may be practicable.

SEC. 3. That whenever a controversy shall arise between an employer or employers and employees subject to this act, which can not be settled through mediation and conciliation in the manner provided in the preceding section such controversy may be submitted to the arbitration of a board of six, or, if the parties to the controversy prefer so to stipulate, to a board of three persons, which board shall be chosen in the following manner: In the case of a board of three, the employer or employers and the employees, parties, respectively, to the agreement to arbitrate, shall each name one arbitrator, and the two arbitrators thus chosen shall select the third arbitrator; but in the event of their failure to name the third arbitrator within five days after their first meeting, such third arbitrator shall be named by the Board of Mediation and Conciliation. In the case of a board of six, the employer or employers and the employees, parties, respectively, to the agreement to arbitrate, shall each name two arbitrators, and the four arbitrators thus chosen shall, by a majority vote, select the remaining two arbitrators; but in the event of their failure to name the two arbitrators within fifteen days after their first meeting the said two arbitrators, or as many of them as have not been named, shall be named by the Board of Mediation and Conciliation.

In the event that the employees engaged in any given controversy are not members of a labor organization, such employees may select a committee which shall have the right to name the arbitrator, or the arbitrators, who are to be named by the employees as provided above in this section.

SEC. 4. That the agreement to arbitrate—

First. Shall be in writing;

Second. Shall stipulate that the arbitration is had under the provisions of this act;

Third. Shall state whether the board of arbitration is to consist of three or six members;

Fourth. Shall be signed by duly accredited representatives of the employer or employers and of the employees;

Fifth. Shall state specifically the questions to be submitted to the said board for decision;

Sixth. Shall stipulate that a majority of said board shall be competent to make a valid and binding award;

Seventh. Shall fix a period from the date of the appointment of the arbitrator or arbitrators necessary to complete the board, as provided for in the agreement, within which the said board shall commence its hearings;

Eighth. Shall fix a period from the beginning of the hearings within which the said board shall make and file its award: *Provided*, That this period shall be thirty days unless a different period be agreed to;

Ninth. Shall provide for the date from which the award shall become effective and shall fix the period during which the said award shall continue in force;

Tenth. Shall provide that the respective parties to the award will each faithfully execute the same;

Eleventh. Shall provide that the award and the papers and proceedings, including the testimony relating thereto, certified under the hands of the arbitrators, and which shall have the force and effect of a bill of exceptions, shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arises or the arbitration is entered into, and shall be

final and conclusive upon the parties to the agreement unless set aside for error of law apparent on the record;

Twelfth. May also provide that any difference arising as to the meaning or the application of the provisions of an award made by a board of arbitration shall be referred back to the same board or to a subcommittee of such board for a ruling, which ruling shall have the same force and effect as the original award; and if any member of the original board is unable or unwilling to serve another arbitrator shall be named in the same manner as such original member was named.

SEC. 5. That for the purposes of this act the arbitrators herein provided for, or either of them, shall have power to administer oaths and affirmations, sign subpœnas, require the attendance and testimony of witnesses, and the production of such books, papers, contracts, agreements, and documents material to a just determination of the matters under investigation as may be ordered by the court; and may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements, and documents to the same extent and under the same conditions and penalties as is provided for in the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, and the amendments thereto.

SEC. 6. That every agreement of arbitration under this act shall be acknowledged by the parties thereto before a notary public or a clerk of the district or the circuit court of appeals of the United States, or before a member of the Board of Mediation and Conciliation, the members of which are hereby authorized to take such acknowledgments; and when so acknowledged shall be delivered to a member of said board or transmitted to said board to be filed in its office.

When such agreement of arbitration has been filed with the said board, or one of its members, and when the said board, or a member thereof, has been furnished the names of the arbitrators chosen by the respective parties to the controversy, the board, or a member thereof, shall cause a notice in writing to be served upon the said arbitrators, notifying them of their appointment, requesting them to meet promptly to name the remaining arbitrator or arbitrators necessary to complete the board, and advising them of the period within which, as provided in the agreement of arbitration, they are empowered to name such arbitrator or arbitrators.

When the arbitrators selected by the respective parties have agreed upon the remaining arbitrator or arbitrators they shall notify the Board of Mediation and Conciliation; and in the event of their failure to agree upon any or upon all of the necessary arbitrators within the period fixed by this act they shall, at the expiration of such period, notify the Board of Mediation and Conciliation of the arbitrators selected, if any, or of their failure to make or to complete such selection.

If the parties to an arbitration desire the reconvening of a board to pass upon any controversy arising over the meaning or application of an award, they shall jointly so notify the Board of Mediation and Conciliation, and shall state in such written notice the question or questions to be submitted to such reconvened board. The Board of Mediation and Conciliation shall thereupon promptly communicate with the members of the board of arbitration or a subcommittee of such board appointed for such purpose pursuant to the provisions of the agreement of arbitration, and arrange for the reconvening of said board or subcommittee, and shall notify the respective parties to the controversy of the time and place at which the board will meet for hearings upon the matters in controversy to be submitted to it.

SEC. 7. That the board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings; but in its award or awards the said board shall confine itself to findings or recommendations as to the questions specifically submitted to it or matters directly bearing thereon. All testimony before said board shall be given under oath or affirmation, and any member of the board of arbitration shall have the power to administer oaths or affirmations. It may employ such assistants as may be necessary in carrying on its work. It shall, whenever practicable, be supplied with suitable quarters in any Federal building located at its place of meeting or at any place where the board may adjourn for its deliberations. The board of arbitration shall furnish a copy of its award to the respective parties to the controversy, and shall transmit the original, together with the papers and proceedings and a transcript of the testimony taken at the hearings, certified under the hands of the arbitrators, to the Board of Mediation and Conciliation,

to be filed in its office. The clerk of any court of the United States in which awards or other papers or documents have been filed by boards of arbitration in accordance with the provisions of the act approved June first, eighteen hundred and ninety-eight, providing for mediation and arbitration, is hereby authorized to turn over to the Board of Mediation and Conciliation, upon its request, such awards, documents, and papers. The United States Commerce Court, the Interstate Commerce Commission, and the Bureau of Labor are hereby authorized to turn over to the Board of Mediation and Conciliation, upon its request, any papers and documents heretofore filed with them and bearing upon mediation or arbitration proceedings held under the provisions of said act.

SEC. 8. That the award, being filed in the clerk's office of a district court of the United States as hereinbefore provided, shall go into practical operation, and judgment shall be entered thereon accordingly at the expiration of ten days from such filing, unless within such ten days either party shall file exceptions thereto for matter of law apparent upon the record, in which case said award shall go into practical operation and judgment be entered accordingly when such exceptions shall have been finally disposed of either by said district court or on appeal therefrom.

At the expiration of ten days from the decision of the district court upon exceptions taken to said award as aforesaid judgment shall be entered in accordance with said decision, unless during said ten days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said exceptions and to be decided.

The determination of said circuit court of appeals upon said questions shall be final, and, being certified by the clerk thereof to said district court, judgment pursuant thereto shall thereupon be entered by said district court.

If exceptions to an award are finally sustained, judgment shall be entered setting aside the award in whole or in part; but in such case the parties may agree upon a judgment to be entered disposing of the subject matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

SEC. 9. That whenever receivers appointed by a Federal court are in the possession and control of the business of employees covered by this act the employees of such employers shall have the right to be heard through their representatives in such court upon all questions affecting the terms and conditions of their employment; and no reduction of wages shall be made by such receivers without the authority of the court therefor, after notice to such employees, said notice to be given not less than twenty days before the hearing upon the receivers' petition or application, and to be posted upon all customary bulletin boards along or upon the railway or in the customary places on the premises of other employers covered by this act.

SEC. 10. That each member of the board of arbitration created under the provisions of this act shall receive such compensation as may be fixed by the Board of Mediation and Conciliation, together with his traveling and other necessary expenses. The sum of $25,000, or so much thereof as may be necessary, is hereby appropriated, to be immediately available and to continue available until the close of the fiscal year ending June thirtieth, nineteen hundred and fourteen, for the necessary and proper expenses incurred in connection with any arbitration or with the carrying on of the work of mediation and conciliation, including per diem, traveling, and other necessary expenses of members or employees of boards of arbitration and rent in the District of Columbia, furniture, office fixtures and supplies, books, salaries, traveling expenses, and other necessary expenses of members or employees of the Board of Mediation and Conciliation, to be approved by the chairman of said board and audited by the proper accounting officers of the Treasury.

SEC. 11. There shall be a Commissioner of Mediation and Conciliation, who shall be appointed by the President, by and with the advice and consent of the Senate, and whose salary shall be $7,500 per annum, who shall hold his office for a term of seven years, and until a successor qualifies, and who shall be removable by the President only for misconduct in office. The President shall also designate not more than two other officials of the Government who have been appointed by and with the advice and consent of the Senate, and the officials thus designated, together with the Commissioner of Mediation and

Conciliation, shall constitute a board to be known as the United States Board of Mediation and Conciliation.

Present: Senators Newlands (chairman), Smith of South Carolina, Pomerene, Robinson, Saulsbury, Thompson, Clapp, Cummins, Brandegee, Lippitt, and Townsend.

The following members of the Committee on the Judiciary of the House of Representatives were also present: Messrs. Clayton (chairman), Webb, Floyd, McCoy, Beall, Fitzhenry, and Morgan.

Also present: Hon. Seth Low, president the National Civic Federation; Judge Martin A. Knapp, United States Commerce Court; Dr. Charles P. Neill; A. B. Garretson, president Order of Railway Conductors; W. S. Stone, grand chief International Brotherhood of Locomotive Engineers; W. S. Carter, president Brotherhood Locomotive Firemen and Enginemen; and H. E. Wills, assistant grand chief International Brotherhood of Locomotive Engineers.

The CHAIRMAN. The committee will come to order. Gentlemen, I will state that the purpose of this meeting is to consider a bill introduced by myself, Senate bill 2517, providing for mediation, conciliation, and arbitration in controversies between certain employers and their employees.

This bill is an enlargement and extension of the Erdman Act, an act which has had thus far a very happy effect, and is intended to extend the beneficence of its operation.

The bill was drawn by the cooperation of the representatives of the various railroad employees' organizations, the prominent officials of five or six great railway systems, and a committee of the Civic Federation, and the valuable cooperation of Judge Knapp, the chief justice of the Commerce Court, and Dr. Neill, the Commissioner of Labor, was also secured.

The committee on draft of proposed changes in the Erdman Mediation Act is as follows:

William C. Brown, president New York Central Lines; W. S. Carter, president Brotherhood Locomotive Firemen and Enginemen; Ralph M. Easley, chairman executive council the National Civic Federation; A. B. Garretson, president Order of Railway Conductors; Hon. Martin A. Knapp, judge United States Commerce Court; W. G. Lee, president Brotherhood Railway Trainmen; Robert S. Lovett, president Union Pacific Railroad; Hon. Seth Low, president the National Civic Federation; Marcus M. Marks, chairman department on industrial mediation law the National Civic Federation; Darius Miller, president Chicago, Burlington & Quincy Railroad; Charles P. Neill, former Commissioner Bureau of Labor Statistics, United States Department of Labor; H. B. Perham, president Brotherhood Railway Telegraphers; Samuel Rea, president Pennsylvania Railroad; Warren S. Stone, grand chief International Brotherhood of Locomotive Engineers; Frank Trumbull, chairman board of directors Chesapeake & Ohio Railroad and of the Missouri, Kansas & Texas Railway; Charles A. Wickersham, president Atlanta & West Point Railroad and of the Western Railway of Alabama; and Daniel Willard, president Baltimore & Ohio Railroad.

I believe this presents your unanimous recommendation, and all parties are exceedingly desirous that there should be early action upon the bill, particularly in view of the strained relations between the employees of the various railroad systems and the railroads, the

former claiming that the increased cost of living demands an increase in their wages.

It is, of course, hoped that under this act everything that is needful and desired will be accomplished by conciliation instead of through strikes.

I have also to state that it was the desire of the representatives of the labor organizations, and of Mr. Low, of the Civic Federation, that the Judiciary Committee of the House, to which this bill has been referred, should sit with the Interstate Commerce Committee of the Senate, with a view to hearing those who had information to give regarding the purpose of this bill, and Judge Clayton, the chairman of the Judiciary Committee of the House, has very kindly consented to bring his committee here and to participate in the hearing.

I regret to say that since I gave notice of this meeting a notice has been given of a Democratic caucus in the Senate, with a view to considering the tariff bill, and of course that is a matter of such pressing importance that the Democratic members of this committee will be compelled to attend it. But the hearings will be taken down stenographically and the Senate Members who are unable to be present here will of course be able to avail themselves of these hearings. The members of the Judiciary Committee of the House, I am told by Judge Clayton, will have to leave here a little before 12 o'clock.

Judge CLAYTON. Yes; as the House will be in session to-day at 12, and we are compelled to be there.

Senator CUMMINS. Do you mean, Mr. Chairman, that all the Democratic members of this committee must go to the caucus?

The CHAIRMAN. Yes; I am afraid so. And I will state that I have asked Senator Simmons whether there would be any break in the Democratic caucus to-day, and he tells me that they will be adjourned from 1 o'clock until 3 o'clock, and if you shall not have finished your hearing by 12 o'clock and desire the Democratic Members to be here between 1 o'clock and 3 o'clock, we can adjourn the meeting until 1 o'clock in order that the Democratic Members may be present. If, however, you have finished your hearing by 12 o'clock, I hardly think it will be necessary to hold a meeting simply in order that the Democratic Members may attend, because they can read the hearings, and it is not the purpose of the committee to take any action now.

Senator CUMMINS. Mr. Chairman, it is unfortunate that there is this conflict of engagements. I am very sorry to have a matter of this importance heard without the presence of the majority members of the committee. I suggest that you put it to those who are here from abroad whether they would prefer to go on with the hearing now without the full committee being present or whether they would prefer to come at some other time, at which time the full committee could be present.

The CHAIRMAN. I understand from Mr. Low that their committee is very desirous of early action. They are desirous that this hearing shall be had in order that this bill may be included in the House program, which will be determined by the Democratic caucus next week, and whilst he is desirous, of course, that all the members of both committees shall be present, it is of importance to press the

hearing now in order to expedite action in the House. Is that so, Mr. Low?

Mr. Low. That is so, Mr. Chairman. Of course, we could appear before the Judiciary Committee of the House this morning, if that is preferred by the Senate committee, and before your committee in the afternoon. Some of us could certainly be here.

Senator CUMMINS. I am asking simply that the question be determined by those who are here from abroad. My observation is that if the hearing is of any value, its value is greatly enhanced if the members of the committee hearing it can be present when the oral statements are being made, or the oral arguments are being made. But it is more difficult to get members of the committee to read the hearings than listen to them.

Mr. CLAYTON. Suppose, Senator, that we proceed until 12 o'clock, anyway, and then we can see the exact condition and if it is desired we might postpone the hearing for another day, or conclude it to-day. I think we have about an hour and a half that we might proceed now.

The CHAIRMAN. I think that would be the best way.

Senator CUMMINS. That is satisfactory to me, if it is satisfactory to those who desire to be heard.

Mr. Low. Yes.

The CHAIRMAN. Mr. Low, who will speak first?

Mr. Low. I will present the first argument.

The CHAIRMAN. I will ask Senator Clapp, the ranking member of the minority, to take the chair, as I have to go to attend the caucus meeting.

(The chairman [Senator Newlands] and Senator Thompson left the room.

Senator Clapp assumed the chair.)

STATEMENT OF HON. SETH LOW, PRESIDENT THE NATIONAL CIVIC FEDERATION.

Mr. Low. Mr. Chairman and gentlemen of the two committees, I shall try to place before you as briefly as possible why this bill is here at all, and then call upon others who are here to explain the bill more in detail. Before doing so, I should like to express on behalf of all whom I represent our very high appreciation of the courtesy of the two committees in giving us this early hearing, and in arranging to meet together. We perfectly understand that the unexpected call of the Democratic Senate caucus has disturbed the arrangement to some extent, but we are very glad to avail ourselves of the joint hearing just as matters are.

Senator ROBINSON. I suggest, Mr. Chairman, that in view of the importance of this hearing I should like to be present during the hearing, and I think at least some members of the majority part of the committee ought to have that opportunity. If some arrangement has been effected with the chairman of the committee I suppose I will have to abide it, but otherwise I would suggest that the committee adjourn until some time which will not conflict with the Democratic caucus.

Senator CLAPP. The trouble, Senator, is right here, that a number of gentlemen are here from some distance.

Senator ROBINSON. As far as that is concerned, Mr. Chairman, gentlemen are here from some distance all the time.

Senator CLAPP. But the chairman of this committee, a member of the majority party, this morning has made this arrangement. Now, if it is not satisfactory to you——

Senator ROBINSON. I stated that if the chairman of the committee had made such an arrangement I would abide it.

Senator CUMMINS. I made the suggestion you are now making, that it seemed to me that the hearing might be postponed until it would not be in conflict with the Democratic caucus.

Senator ROBINSON. Mr. Chairman, this is a most unusual proceeding.

Senator CLAPP. If the Senator will move to adjourn the chairman will entertain the motion.

Senator ROBINSON. I move that the committee now adjourn until half past 1 o'clock to-day.

Mr. LOW. May I make one suggestion? Would the Senate committee be willing to adjourn until half past 1, as Senator Robinson suggests?

Senator ROBINSON. I move we adjourn until half past 1 o'clock.

Mr. LOW. May we now have an hour's hearing before the Judiciary Committee of the House and then we can conclude that, and then some of us can be present this afternoon, if not all of us?

Senator CLAPP. It is moved that the committee adjourn until half past 1 o'clock this afternoon. Are you ready for the question?

Senator CUMMINS. It is not likely that I can be present at half past 1, but that does not make any difference.

Senator CLAPP. Are you ready for the question?

Mr. LOW. This does not mean the adjournment of the entire committee, the House members and all?

Senator CLAPP. The House committee are simply here by the invitation of Senator Newlands, and to avoid two hearings they come and sit with the Senate committee. Of course, this matter is entirely subject to the approval of the committee.

Senator ROBINSON. Mr. Chairman, I have no desire to criticize the action of the chairman of this committee, but it so happens that I am the only member of the majority party of the Senate Committee on Interstate Commerce present, and I am compelled to attend the Democratic caucus, and it seems to me like it is a very unusual and very extraordinary proposition to insist upon having hearings under those conditions.

Senator CUMMINS. You knew that Senator Newlands and Senator Thompson had been here, did you not?

Senator ROBINSON. No; I did not know it.

Senator CUMMINS. And that it was Senator Newlands who made this arrangement?

Senator ROBINSON. I stated in the beginning that if Senator Newlands had made such an arrangement I would abide by it, and I will withdraw the motion and acquiesce for the time being in the action taken. I will have to be excused, however.

Senator CLAPP. Very well; the motion is withdrawn. Then let us go ahead.

Mr. LOW. Mr. Chairman and gentlemen, this bill on which the hearing is to be given to-day is in effect an amendment of the Erd-

man Act. I assume that the Erdman Act is so familiar to the members of the committee that I need not speak of it in detail. It has been on the statute books, I think, for nearly 15 years. It was upon the statute books for several years before it was resorted to at all. Under its terms any interstate railroad or any of its employees could apply originally to the chairman of the Interstate Commerce Commission and the Commissioner of Labor to serve as mediators, to try to bring both the railroads and their employees together when questions were in dispute.

Judge Knapp, who was then the chairman of the Interstate Commerce Commission, displayed such great skill in connection with these matters that when he was made chief justice of the Commerce Court the Erdman law as originally passed was amended so as to constitute the chief justice of the Commerce Court and the Commissioner of Labor the mediators under the Erdman Act.

When the Department of Labor was created last year the old office of Commissioner of Labor, which had been in the old Department of Commerce and Labor, was assigned to the Department of Labor and he was given the title of Commissioner of Labor Statistics, and all the authority vested in the Commissioner of Labor under the Erdman Act was transferred to that office.

That is the status of the law to-day as it relates to questions of mediation.

Those gentlemen as mediators responded to the call either of a railroad or of its employees when a dispute was growing up, and by conference with both parties tried to bring about an adjustment. That business has been carried on so successfully that the duty of those two gentlemen has become almost continuous—certainly the Commissioner of Labor has had to go first to one extreme of the country and then to the other to discharge the most important duty, and by the discharge of that duty—a successful discharge of it—an immense number of railroad strikes, large and small, have been avoided.

Those two gentlemen had another office. Under the Erdman Act legislative sanction is given for arbitration between these parties if mediation fails. The general scheme provided for arbitration is that each party shall name one arbitrator, and if they fail to agree upon the third, whom they may name if they can agree, then these two conciliators representing the Government shall name the third arbitrator.

That is the status of the Erdman Act to-day as it relates to arbitration. The mediation feature of the law was appealed to by one side or the other for several years before there was any arbitration at all under the Erdman Act. Latterly more arbitrations have been held than formerly under that act. Originally these disputes were most frequently between some one railroad brotherhood, representing some branch of the operating employees of trains, and a single railroad. Latterly, in the development of things in our day, these arbitrations have become arbitrations not between one brotherbood and one railroad but between a brotherhood and large groups of railroads.

About a year ago the Brotherhood of Locomotive Engineers made certain demands upon the railroads of the eastern part of the United States—some 54 in number, as I recall—and both sides were willing to arbitrate. The railroads pointed out that it was quite unreasonable

to submit a controversy involving 54 roads to the determination of practically one man. The locomotive engineers, in effect, assented to the justice of that criticism, and therefore voluntarily agreed to arbitrate under a system provided, but, on that particular occasion, without any sanction of law behind it. The result was, as I remember, a board of seven, one representing the railroads and one the locomotive engineers and five not connected with either. The results of that arbitration were so unfortunate, from the point of view of the locomotive engineers, and so unfortunate from the point of view of all the other members, that it has brought about the situation which this bill endeavors to deal with. The locomotive engineers have not criticized, so far as I know, the definite findings on the questions referred to that arbitration, but they do feel that the arbitrators went far outside of the questions which were submitted to them for arbitration. They feel, whether justly or not I do not undertake to say, that more time was consumed in the arbitration than was necessary, to the great disadvantage of all the interests concerned. At any rate, after that arbitration not a single railroad brotherhood was willing to arbitrate in that voluntary fashion.

The next demands which came upon this same group of railroads came from the Brotherhood of Firemen and Enginemen, and they said they would arbitrate under the Erdman law as it stood, but they wished to arbitrate under the sanction of law so that witnesses could be sworn and so that the arbitrators could be kept within the limits of the subject submitted for arbitration. The railroads objected on the same ground as before to arbitrating before so small a board. I think I am entirely within bounds in saying that the firemen would have been willing to arbitrate before a larger board, but they were not willing to arbitrate except under the sanction of law, and the only board provided by sanction of law for that purpose was a board of three. That arbitration was held and it resulted in a unanimous award.

Soon afterwards the Brotherhood of Conductors, the Order of Railway Conductors, and the Brotherhood of Trainmen made corresponding demands for increase of wages and other subjects upon this same group of roads. Both of these other arbitrations, I may say, resulted in a substantial increase of wages. The same group of roads therefore find themselves confronted to-day with the same problem that met them when the engineers asked for certain modifications of their agreement, and with the same problem that confronted them when the firemen asked for their agreement. I think that this bill, drawn as it is, shows that the employees of the railroads feel, as the railroads do, that when a group of railroads are involved in a controversy there ought to be a larger board of arbitration than three. The conductors and trainmen's demands were refused by the railroads, and both of these brotherhoods are now taking strike votes which are returnable on the 1st of July.

This bill is supported by all of the brotherhoods and by such representative railroads in the United States as the Pennsylvania, the New York Central, the Union Pacific, the Baltimore & Ohio, the Atlanta & West Point, the Missouri, Kansas & Texas, the Chicago, Burlington & Quincy, and others, so that we are justified in believing that the other railroad systems of the United States will also accept this bill. In other words, gentlemen, this is a measure which comes

before you not as representing a dispute between employers and employees but as representing the unanimous support of the great interstate railroad systems and all of the railroad brotherhoods for the amendment of the Erdman Act so as to provide for a board of six arbitrators instead of a board of three.

This bill as drawn makes it optional to have a board of three or of six. I think both sides believe that where the controversy is between a single brotherhood and one railroad a board of three is better than a larger one, but where the controversy involves a whole group of railroads, covering an entire region of the United States, then the board ought to be larger.

Senator CUMMINS. May I ask a question?

Mr. LOW. Certainly, Senator.

Senator CUMMINS. I will say that one of the difficulties of the present law—I do not mean the present law, but the practice under the present law—is that the board of arbitrators appointed recently, consisting of seven persons, passed beyond the scope and beyond the questions submitted to them and made findings on outside matters. What is there in this bill that would prevent the board of arbitrators selected here from doing the same thing?

Mr. LOW. That board of arbitrators was a voluntary board. That arbitration was not held under the sanction of law. This bill, in section 7, reads:

> That the board of arbitration shall organize and select its own chairman and make all necessary rules for conducting its hearings; but in its award or awards the said board shall confine itself to findings or recommendations as to the questions specifically submitted to it or matters directly bearing thereon.

Senator CUMMINS. I know that; but I assume that board to which you referred proceeded under a written agreement of arbitration which did define the subject. Now, if the board appointed here should pass beyond that there would be no way to prevent it, would there? I do not know any way, however, by which the finding of such a board could be enforced by law.

Mr. LOW. I think it has been enforced, Senator, under the Erdman Act as it now stands. There was a case in California, if I remember correctly. Some of the gentlemen here could answer much more to the point than I. That was a case in which an appeal was made, I think, by the brotherhood against the finding on substantially this ground—that it went outside. Am I not right?

Mr. NEILL. Yes.

Mr. LOW. They went outside the question that was submitted.

Senator CUMMINS. What I mean is any award of a board of arbitration, for instance, in regard to wages. How could it be enforced?

Mr. LOW. That is the beauty of this whole Erdman Act, and this bill differs in no respect from the original act as to that. Both sides agree to accept the arbitration before it begins.

Senator CUMMINS. Certainly. But what I mean to say is that there is no process of law by which either side could be compelled to do the things that the board found ought to have been done, is there?

Mr. LOW. No; the sole reliance is upon voluntary arbitration.

Senator CUMMINS. Certainly; I wanted to make that point perfectly clear.

Senator ROBINSON. Do you not think the provisions on pages 11 and 12, and subsequent provisions, that if the board did exceed its jurisdiction and undertook to pass upon questions that were not properly submitted, that by the filing of exceptions, and prosecuting the remedy provided in this bill, a court could finally be had to pass upon the question and determine whether or not the board had exceeded its jurisdiction? That relates to the question formerly asked you by Senator Cummins as to what remedy could be invoked if the board did, in spite of the limitation of the bill, undertake to pass upon some subject that was not submitted to it. I see here that there is a provision for making exceptions to the award and submitting that question to the court, and the court making the decision upon it. I presume that would be sufficient to confine the board to a consideration of proper subjects.

Mr. LOW. That is the intention; yes. The essential thing is to have the sanction of law for these arbitrations. It is quite clear that these great problems can not be worked out by voluntary arbitration, including a voluntary board, because such a board has no right to swear witnesses.

Senator ROBINSON. As I understand you, Mr. Low, one of the distinctive differences between existing law and the proposed law is that this bill contemplates under some conditions an increase in the board to six, and does give the sanction of law to the arbitration. Can you state other material amendments of the Erdman Act that are carried in this bill—or changes?

Mr. LOW. I think the only other amendment that is substantial is that it provides for the appointment by the President of a commissioner of mediation and arbitration and of an assistant commissioner, those two officers to take the place, to perform the duties now devolving upon the chief justice of the Commerce Court and upon the Commissioner of Labor.

The reason for that amendment in the main is that this business of mediation has become so great, so continuous, so extensive, and the country is so large that it is the opinion of both Judge Knapp and Mr. Neill, who are here to-day, and who suggested that change, that it is necessary, if the bill is to fulfill its perfect work, that there should be officers appointed by the President with no other duty to attend than that. I was going to say, Mr. Chairman, that, if I had sufficiently outlined the general scope and purpose of the bill, I would be very glad if I might call on Judge Knapp and Dr. Neill to discuss these details.

Senator CLAPP. Judge Clayton, do you or the other members of your committee desire to ask any questions?

Mr. CLAYTON. The members of the House committee, most of us, have had some conferences with Mr. Low and other members in support of this measure. and we knew a good deal about this measure before this hearing was had this morning.

Senator CUMMINS. Mr. Low, what was your purpose in making six the number instead of an odd number?

Mr. LOW. Because that was the only number upon which we could get unanimous agreement. Or we could get an agreement on three, six, or nine.

Senator CUMMINS. It would be unfortunate in such a case if there was an even division upon any controverted matter. I was wondering whether you had given it your consideration.

Mr. LOW. Yes; we had, Senator. We do not think that danger is a very great one. I pointed out in a public statement about the bill that in the Alaskan controversy both England and the United States were represented by equal numbers, but it did not prevent a settlement of that question.

(The chairman [Senator Newlands] entered the room.)

The CHAIRMAN. May I interrupt? I will state that an arrangement has been made by the Democratic caucus for a recess, so that the Democratic members of this committee can be here at 2 o'clock this afternoon.

Mr. CLAYTON. Mr. Low, right in that connection, the board being composed of six arbitrators, and where there is an equal division on any controverted question would it not be well to provide for the appointment of an umpire, to be the seventh man or the umpire in case there was an equal division?

Mr. LOW. Gentlemen, of course that suggestion has occurred to those who drew the bill. The fact is that we could get an agreement on six and we could not get an agreement on seven.

Senator CUMMINS. Is there any significance in having the even number? Has that been a subject of discussion among you; and if there is any significance in it, what is the significance?

Mr. LOW. In so far as I know the only significance is that those who are interested in the passage of this bill, who are connected with the railroads and the brotherhoods, have agreed that the railroads and the brotherhoods and the general public would have the same representation.

That, from their point of view, is necessary to make the arbitration fair.

Senator ROBINSON. So it would have to be three, six, or nine, or some such ratio as that?

Mr. LOW. Yes.

Senator CUMMINS. The provision is if you have three, the interested parties select one each, and the two thus selected choose another. Why could you not have the same provision with regard to six, making it seven, having the interested parties select the three each and the six select another?

Mr. LOW. It is perfectly practicable, and perhaps I ought to leave the discussion of that question to the railroads and the engineers; but that, you perceive, Senator, would bring about the decision of these great questions by one man, being an umpire, and that is what is thought to be so unfortunate. The belief is that if the board is made up of six, every decision will be by 4 to 2, unless it is unanimous, or 5 to 1, which would carry much more moral weight with the community than a decision of 4 to 3.

Of course, it is possible under this system that there would be no decision after a long arbitration, but we think that is so slight a danger that it is very much better to pass a bill that is perfectly satisfactory to those who have got to work under it than to pass a bill that they may not be willing to accept.

Senator CUMMINS. I did not know that there had been any discussion about it. I did not see the significance of it until now. I see it now.

Mr. LOW. There has been a discussion of it, and there is a difference of opinion. There was at the beginning. I think I may say that there was a difference of opinion on both sides. Some railroad men—not connected with the committee, I think—prefer 2 and 2, while others much prefer 2 and 3.

Senator CUMMINS. Do you not think this same principle ought to be extended to other instances of controversies between employers and employees? Why confine it to the railroads?

Mr. LOW. Senator, of course, all arbitration to be worth anything must be voluntary. Therefore the system that is to work at all must be a system that is satisfactory to those who are going to arbitrate under it, and in many cases they have had by choice these boards of even numbers. They are unwilling to submit it to an odd man.

Senator CUMMINS. I am not speaking of the number, but I am speaking of the general scope of the bill. It is confined to controversies between common carriers and their employees. Now, why should not the same principle be extended to other industries that are doing an interstate business?

Mr. LOW. There is no objection whatever on the part of those presenting this bill to that being done. Our attitude has been that they would try to suggest amendments to the Congress that would enable arbitrations of this great industry to go forward under the sanction of law without its involving questions as to other industries that might not want to come under that system. But it is perfectly understood that if any body of men does want to come under it, they are most willing; they have no desire to limit it, although the Erdman Act is limited, and therefore this law is limited just as the Erdman law.

Senator BRANDEGEE. I wanted to ask Mr. Low one question before he took his seat. What is the history of the awards under the Erdman Act as to the compliance with the award by the parties to the arbitration?

Mr. LOW. There has never been a breach. You can not compel them to arbitrate unless they are willing and satisfied with the terms of the arbitration.

Might I, just before I sit down, emphasize the urgent character of this situation? If we can have this law, I think you can look forward to industrial peace, so far as the railroads are concerned, in the near future without doubt. If you do not have it, I can not say what both sides will do; but there are two strike votes being taken now, and unless we can have this law in force in the very near future we may be confronted with railroad disturbances on a scale which this country has seldom seen; and that is our excuse, gentlemen, for asking for this early hearing and for pressing the question of urgency on both Houses.

Senator BRANDEGEE. How soon do you think these disturbances will take place?

Mr. LOW. I think in a few months the trouble will break out. I am informed that it will be very soon after the 1st of July unless this bill is passed.

Mr. FITZHENRY. How would this passage of this law tend to do away with troubles which are now threatened?

Mr. LOW. Because the railroads and the brotherhoods representing their employees are both willing to arbitrate under this law.

Mr. FITZHENRY. Is there anything to prevent them from arbitrating under the provisions of this act, whether it is passed or not?

Mr. LOW. Only that they are not willing to. If it is not passed, there is no sanction of law for the arbitration. They can not swear their witnesses. They have got none of the protection as to the award which this act offers. They could, of course, use the Erdman Act just as it is, but that is exactly what the railroads are unwilling to do. They have yielded as to the firemen, and I should like to point out that all of the railroad employees share the feeling of the railroads themselves, that when these controversies involve a whole region of the United States it is not reasonable to leave the decision to one man.

Mr. CLAYTON. The objection to proceeding under the Erdman Act is that the board of arbitration is too small, is without adequate power, can not swear the witnesses, and therefore you think the parties to the controversy, in the event of a railroad strike, would not act under the Erdman Act, and therefore you appeal to Congress to pass this act which enlarges the Erdman law?

Mr. LOW. That is substantially it, Mr. Chairman. Under the Erdman Act a witness can not be sworn, and they can not be sworn under a voluntary arbitration. If the board were larger than the number provided under the Erdman Act——

Mr. DYER. Would you state to the committee, before you take your seat, what the sentiment is among the different organizations and the public generally before whom you have brought this question?

Mr. LOW. I think it is unanimously, as far as I am informed, in favor of this action.

Mr. DYER. To what extent have you taken it up with boards of trade or civic organizations generally throughout the country?

Mr. LOW. There has been no time to take it up in a large way with civic organizations, because this situation is brought to a head by demands submitted only this spring. But I think it may be taken for granted that the general public will be pleased with this bill.

Mr. DYER. There is no opposition to it anywhere?

Mr. LOW. None that we have heard of.

Senator ROBINSON. Of course the failure to assert opposition often arises from lack of knowledge on the part of the public as to what is involved. Now, I think it is a fair question, inasmuch as the statement is made that all the railroads of the country and the labor organizations affected have agreed upon it, to ask what action has been taken by them as indicating that agreement or whether it is assumed by their representatives that they do agree. How do we know that they have agreed?

Mr. LOW. As far as the railroads are concerned, they have taken no formal action, but these gentlemen were represented in the conference that prepared the bill and which is now supporting the bill, namely: William C. Brown, president of the New York Central lines; Robert S. Lovett, president Union Pacific Railroad; Darius

Miller, president Chicago, Burlington & Quincy Railroad; Samuel Rea, president Pennsylvania Railroad; Frank Trumbull, chairman board of directors, Chesapeake & Ohio Railroad; and Charles A. Wickersham, president Atlanta & West Point Railroad and also of the Eastern Railroad of Alabama; and Daniel Willard, president of the Baltimore & Ohio Railroad.

I think that, so far as official action can speak for the railroads, gentlemen will realize that the railroads of the United States are likely to support that action.

So far as the brotherhoods are concerned, Mr. W. S. Carter, president of the Brotherhood of Locomotive Firemen and Enginemen, and A. B. Garretson, president of the Order of Railway Conductors, have agreed to support the bill and are present, and Mr. W. G. Lee, president of the Brotherhood of Railway Trainmen, agrees to support the bill, but is unable to be here. He has been in San Francisco and was unable to be here, but he has given his proxy to Mr. Stone and Mr. Garretson. Then there is Mr. H. B. Perham, president of the Brotherhood of Railway Telegraphers, who supports the bill, and Mr. Warren S. Stone, grand chief International Brotherhood of Locomotive Engineers, is also present.

Senator ROBINSON. So that representatives of practically all the organizations are here?

Mr. LOW. Yes; all the organizations that are affected by the railroads are behind this, and at least three of their representatives are here to-day to speak for it and answer questions.

STATEMENT OF HON. MARTIN A. KNAPP, CHIEF JUSTICE UNITED STATES COMMERCE COURT.

Judge KNAPP. Mr. Chairman and gentleman, the scope and aim of this measure are practically identical with the scope and aim of the present law. It differs only in the machinery for making the purposes effective. Mr. Low has explained the reasons for changing the number of arbitrators when a controversy can not be settled by mediation, and it is upon this phase of the bill that it is intended to provide for what may be called two classes of cases, one being a controversy, if you please, between one organization and some road, which may not be an extensive one, where to have a board of six would involve greater expense both to the parties and to the Government than the nature of the controversy would seem to require, and then to provide for this larger board for the settlement of those controversies which take in thousands of employees and large groups of railroads.

In place of those who are now made mediators under the present law it is proposed to substitute a board of mediation and conciliation and to appoint an official, called here a commissioner of mediation and conciliation, who shall give his entire time to the work contemplated by this bill, with an assistant, who, of course, will be a member of this board, and that there shall be appointed by the President two other officials already holding office of such a grade and dignity as would have been nominated by the President and confirmed by the Senate, who, together with the commissioner, shall constitute this board. And these other officials may be called in and cooperate with the commissioner in carrying on the work of

mediation in any case where it is found necessary or desirable. When it comes to the appointment of arbitrators, that appointment will be made by the board.

It already appears from what Mr. Low has said that it seems there are two general things quite obvious that create a strong presumption in favor of the desirability of an early adoption of this measure. First, that it has been unanimously agreed upon and is earnestly supported by those who are directly interested in the practice of such a law and in its administration, but to me it is a very significant and a very encouraging fact that the representatives of the five great railroad labor organizations and the representatives of the great railroad systems of the United States have come to an agreement as to the law which shall be passed for the purpose of preventing strikes and in case of need bringing the controversies which may arise to possible settlement.

The second thing is that this measure represents the composite judgment of those who have given the most careful study to a law of this character and whose views expressed in this measure are the result of long experience and careful reflection.

Those, in the main, are all the things which it would seem to be necessary to say—certainly as a preliminary statement. One could talk about this bill indefinitely; its purposes; could refer to what has been accomplished under a law which experience shows lacks suitable machinery for dealing with modern conditions. That is all.

As Mr. Low says, when this law was passed in 1898, the typical, the usual, controversy was between a single organization and a single railroad. The provisions both for mediation and arbitration were well suited for controversies of that nature. To-day the characteristic form in which these controversies arise is by what is called concerted movements—the employees in a given organization and maybe in two or three more organizations in the employ of very large groups of railroads unite in a common demand and take up negotiations with the managers of the railroads throughout an entire section.

Roughly speaking, Mr. Chairman, at the present time for purposes of this kind the country is divided into three sections, the territory north of the Ohio and Potomac and east of Chicago, practically what is called the trunk-line territory; the territory south of the Potomac and east of the Mississippi; and the territory west of Chicago. In all of those sections concerted movements of this kind have taken place within the last three years, and as we saw it, we who have been in touch with it, that is expected to be the characteristic form in which these controversies will arise in the future. That presents a condition that was not contemplated 18 years ago, when this law was passed, and it is because it will so change the machinery as to make it adequate and suitable for dealing with existing conditions and those which may be anticipated that the parties directly interested have agreed upon this substitute measure.

I do not think I will take the time of the committee with a speech. If there are any questions you would like to ask me, I shall be very glad to answer them.

Mr. CLAYTON. Judge Knapp, may I ask you this question: How often have you served in the capacity as mediator in matters of dispute arising between the railroads and their employees?

Judge KNAPP. Judge Clayton, I could not say offhand exactly how many I have personally participated in, but I should say at least 40.

Mr. CLAYTON. Covering a period of how many years?

Judge KNAPP. Beginning actively in the fall of 1906, a period of somewhat less than seven years.

Mr. CLAYTON. And your service in that capacity has brought you to the conclusion that this bill is not only proper but it is necessary to make effective the effort of arbitration of differences between the railroads and their employees?

Judge KNAPP. That is my judgment, Judge Clayton.

Mr. DYER. Supplementing the judge's question, Judge Knapp, you also believe that with the condition as you see it in the industrial world at the present time, in the railroad business, this act should be amended at once, do you not, or at this session of Congress?

Judge KNAPP. I think it may be called almost an emergency. As Mr. Low has explained—just let us consider the situation—the one that confronted all this part of the country, and the great organization of locomotive engineers two years ago, when they asked, and not without reason, for an increase in pay and betterment of working conditions. The railroads said it is not fair to either side to leave a controversy involving tens of thousands of men and millions of dollars a year to the determination of one man, who is to be selected by the two mediators, who may prove, however carefully chosen, either incompetent to deal with a controversy of that magnitude or who may do great injustice to one side or the other.

I think I am quite warranted in saying, Mr. Chairman—I am quite willing to say in this presence—that it is very creditable to the order of Brotherhood of Locomotive Engineers that they recognized that situation and consented to what was in legal effect a common-law arbitration with five umpires, with a result which, of course, was to them very unsatisfactory. And that explains in a way why when the next controversy arose with the firemen they insisted that if there was arbitration at all it should be under the law which they were prepared to obey.

Senator CUMMINS. You have just said that the decision of one man upon so vast a matter is hardly reliable, or, at least, it might be full of danger. I think I catch now what I did not gather before—the real spirit of this section. The idea is that when an arbitration board of six is provided for it should be two from the employers and two from the employees, the four thus selected to choose two more by a majorty vote; and I assume that it is expected that of the two more there shall be one on the side of the employers and one on the side of the employees, or is it expected that these two shall be entirely removed or disassociated from either side of the controversy?

Judge KNAPP. I think, Senator, the law contemplates that they should be impartial, and it certainly would be the duty of the appointing power, in case the representatives of the contending parties did not agree upon the other two, to fill up the board with disinterested men.

Senator CUMMINS. I assume they are agreed upon by the four members of the board originally named, and then you would have

the judgment of two men instead of the judgment of one. That is really the thought you are trying to reach?

Judge KNAPP. Yes; that is it exactly.

Senator CUMMINS. I wish to ask a legal question or two——.

Judge KNAPP. If you will pardon me, let me say another word or two on that point in answer to questions that were asked when Mr. Low was addressing the committee. On the face of it it looks like a contradiction of arbitration to have an even number, because the very idea of an arbitration is to submit the controversy voluntarily to an umpire, and theoretically, of course, it is quite possible that in a large dispute there might be a deadlock. Practically I do not think that would occur, because all the parties—the representatives of the railroads, the representatives of the employees, as well as the other two members, would recognize the necessity of bringing that controversy to a settlement, and the pressure of that necessity would lead to such compromises as would insure an award. And I may say that I think it is a plan which is likely to work out conservative results. Personally I rather incline to the two, two and two, as against the two, two and three.

Senator CUMMINS. In the eleventh paragraph of section 4—I will not read the entire paragraph—it is provided that—

> * * * The award * * * shall be filed in the clerk's office of the district court of the United States for the district wherein the controversy arises or the arbitration is entered into, and shall be final and conclusive upon the parties to the agreement unless set aside for error of law apparent on the record.

Judge KNAPP. That is copied from the present law, Senator, substituting only "district court" for "circuit court."

Senator CUMMINS. I know; but what is really meant by saying that it shall be "final and conclusive," especially in connection with section 8, I believe, in which it is provided that there shall be a judgment of the court upon the award? What would be done to enforce the award after it is filed in the court?

Judge KNAPP. Practically nothing.

Senator CUMMINS. And judgment was entered upon it?

Judge KNAPP. So far as I am concerned, I would be quite willing to leave out all those provisions. I was in favor of a bill, personally, which contained no provisions for review by courts at all.

Senator CUMMINS. I was thinking, suppose the award should be that the railroad company should pay to its employees of a certain class $100 a month, would that be binding upon the railroad company or upon the employees for all time?

Judge KNAPP. Not by any means.

Senator CUMMINS. Then you would expect the award to fix a time during which that wage should be paid?

Judge KNAPP. That is provided in the bill. That is a part of the agreement to arbitrate.

Senator CUMMINS. That is, that the award itself shall fix the time during which the condition should prevail that was complained of, or during which the wage should be paid?

Judge KNAPP. Yes; that is right——

Senator CUMMINS. And then if the employees should refuse to work for that wage it could not be enforced on them?

Judge KNAPP. Surely not.

Senator CUMMINS. And if the railroad company should refuse to pay it could not be enforced against the railroad company?

Judge KNAPP. No; perhaps not.

Senator CUMMINS. I was a little curious about it. You have had a great deal of experience on that.

Judge KNAPP. Let me say—I venture to say that the man who has not been somewhat in touch with these questions does not appreciate the sense of honor of these organizations and of the railway managers.

Senator CUMMINS. I understand perfectly, but I was limiting my question to the effect of a judgment of a court in the matter.

Senator ROBINSON. May I make a suggestion, Senator? As I read it, this filing of the testimony constitutes a bill of exceptions, for on that record a judgment is entered. It is analogous to a proceeding in court where the testimony has been heard, the issue submitted, the findings of the jury made, and the judgment entered by the court. It may be true that in this particular case there is no authority for the enforcement of that judgment. That probably is true. But at the same time it has the moral effect of a conclusion of the proceeding, unless it be found on the face of that record that an error of law was committed, in which event relief may be had by an appeal.

Senator CUMMINS. That is just the point that I had in mind. This practically, then, provides for an appeal from the award of the arbitrators to a district court of the United States?

Senator ROBINSON. Only on a question of law.

Senator CUMMINS. On everything?

Senator ROBINSON. No. When that record is filed according to the plain language of the bill in paragraph 11, page 6, it constitutes a bill of exceptions. From an examination of that bill of exceptions errors of law may appear, as when a case is tried in court, and those errors of law may be appealed from, and it seems to me very properly so.

Senator CUMMINS. I understand, but errors of law very often involve a finding upon the facts made by the board. We have discovered that in a great many of our provisions of the law, generally with regard to review by the courts in administrative proceedings. I do not intend to argue it, but I just wanted to ask the judge what he had in mind.

Judge KNAPP. Those are all provisions which were incorporated in the law when it was passed in 1898, and have remained there ever since, and it seemed on the whole wise to retain them.

Senator CUMMINS. I know they are in the present law, but I have always been rather afraid that you were eventually going to convert the courts of the United States into the arbitrators of labor controversies, and I have never had much sympathy with that idea.

Judge KNAPP. I would like to say in that connection, Senator, that I have never known an instance where the defeated and dissatisfied party to an award did not promptly comply with it in good faith during the period it was in force.

Senator CUMMINS. I am not questioning that at all.

Judge KNAPP. I do not regard these provisions of any practical importance at all.

Senator CUMMINS. But when we are making a law we ought to make it expectant that all these provisions will be appealed to from time to time.

Senator BRANDEGEE. Mr. Chairman, I am not very familiar with the Erdman Act, and I will therefore ask that it be printed in the record as a part of this hearing.

Senator CLAPP. It will be so ordered.

(The Erdman Act is as follows:)

AN ACT Concerning carriers engaged in interstate commerce and their employees.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this act shall apply to any common carrier or carriers and their officers, agents, and employees, except masters of vessels and seamen, as defined in section forty-six hundred and twelve, Revised Statutes of the United States, engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

The term "employees" as used in this act shall include all persons actually engaged in any capacity in train operation or train service of any description, and notwithstanding that the cars upon or in which they are employed may be held and operated by the carrier under lease or other contract: *Provided, however*, That this act shall not be held to apply to employees of street railroads and shall apply only to employees engaged in railroad train service. In every such case the carrier shall be responsible for the acts and defaults of such employees in the same manner and to the same extent as if said cars were owned by it and said employees directly employed by it, and any provisions to the contrary of any such lease or other contract shall be binding only as between the parties thereto and shall not affect the obligations of said carrier either to the public or to the private parties concerned.

SEC. 2. That whenever a controversy concerning wages, hours of labor, or conditions of employment shall arise between a carrier subject to this act and the employees of such carrier, seriously interrupting or threatening to interrupt the business of said carrier, the chairman of the Interstate Commerce Commission and the Commissioner of Labor shall, upon the request of either party to the controversy, with all practicable expedition, put themselves in communication with the parties to such controversy, and shall use their best efforts, by mediation and conciliation, to amicably settle the same; and if such efforts shall be unsuccessful, shall at once endeavor to bring about an arbitration of said controversy in accordance with the provisions of this act.

SEC. 3. That whenever a controversy shall arise between a carrier subject to this act and the employees of such carrier which can not be settled by mediation and conciliation in the manner provided in the preceding section, said controversy may be submitted to the arbitration of a board of three persons, who shall be chosen in the manner following: One shall be named by the carrier or employer directly interested; the other shall be named by the labor organization to which the employees directly interested belong, or, if they belong to more than one, by that one of them which specially represents employees of the same grade and class and engaged in services of the same nature as said employees so directly interested: *Provided, however*, That when a controversy involves and affects the interest of two or more classes and grades of employees belonging to different labor organizations, such arbitrator shall be agreed upon and designated by the concurrent action of all such labor organizations; and in cases where the majority of such employees are not members of any labor organization, said employees may by a majority vote select a committee of their own

hearing upon the receivers' petition or application, and to be posted upon all customary bulletin boards along or upon the railway operated by such receiver or receivers.

SEC. 10. That any employer subject to the provisions of this act and any officer, agent, or receiver of such employer who shall require any employee, or any person seeking employment, as a condition of such employment, to enter into an agreement, either written or verbal, not to become or remain a member of any labor corporation, association, or organization; or shall threaten any employee with loss of employment, or shall unjustly discriminate against any employee because of his membership in such a labor corporation, association, or organization; or who shall require any employee or any person seeking employment, as a condition of such employment, to enter into a contract whereby such employee or applicant for employment shall agree to contribute to any fund for charitable, social, or beneficial purposes; to release such employer from legal liability for any personal injury by reason of any benefit received from such fund beyond the proportion of the benefit arising from the employer's contribution to such fund; or who shall, after having discharged an employee, attempt or conspire to prevent such employee from obtaining employment, or who shall, after the quitting of an employee, attempt or conspire to prevent such employee from obtaining employment, is hereby declared to be guilty of a misdemeanor, and, upon conviction thereof in any court of the United States of competent jurisdiction in the district in which such offense was committed, shall be punished for each offense by a fine of not less than $100 and not more than $1,000.

SEC. 11. That each member of said board of arbitration shall receive a compensation of $10 per day for the time he is actually employed, and his traveling and other necessary expenses; and a sum of money sufficient to pay the same, together with the traveling and other necessary and proper expenses of any conciliation or arbitration had hereunder, not to exceed $10,000 in any one year, to be approved by the chairman of the Interstate Commerce Commission and audited by the proper accounting officers of the Treasury, is hereby appropriated for the fiscal years ending June thirtieth, eighteen hundred and ninety-eight, and June thirtieth, eighteen hundred and ninety-nine, out of any money in the Treasury not otherwise appropriated.

SEC. 12. That the act to create boards of arbitration or commission for settling controversies and differences between railroad corporations and other common carriers engaged in interstate or territorial transportation of property or persons and their employees, approved October first, eighteen hundred and eighty-eight, is hereby repealed.

Approved, June 1, 1898.

Senator BRANDEGEE. Then, in connection with that, I want to ask Judge Knapp how section 11, on page 13, differs from the Erdman Act, with the idea of finding out whether the Erdman Act at present provides for a board of conciliation.

Judge KNAPP. Under the original law, as Mr. Low explained, the chairman of the Interstate Commerce Commission and the Commissioner of Labor were made the mediators. They performed the duties which by this bill are to be performed by the Board of Mediation and Conciliation.

Senator BRANDEGEE. This provides that the President shall also designate not more than two other officials of the Government, who have been appointed by and with the advice and consent of the Senate, to be members of the Board of Mediation and Conciliation. Was there any discussion among you gentlemen who prepared this act as to what kind of officials of the Government were to be the other members of this board?

Judge KNAPP. Yes; and the reason for putting it in in that form, as I understand it, was to give the President a very wide range of selection, because, as you gentlemen can all see, we are dealing with a subject which contains so much human nature that the personal element is of much more consequence than it is in almost any other public [illegible]; and you might, for example, have a Secretary of Labor or even

a Federal judge who, while no matter how able, how upright, nevertheless lacked the personal qualities, the tact, the good judgment, and the ability to get the confidence of both sides which would make him efficient and successful as a mediator.

Senator BRANDEGEE. Why was the membership of the Board of Conciliation limited to Government officials who were already drawing salaries and occupying an office? In other words—I am not saying this by way of criticism, but simply your provision is a limitation upon the very field which you say it is desirable to occupy, to wit, the extent of eligibles from which you might choose.

Judge KNAPP. There are two or three reasons. First, the mediators under the present law were officials appointed for and discharging other duties and to whom this service was an incidental and added duty. Second, on the theory that to take some man already in public office, of high character, gives added dignity and influence to the Board of Mediation and Conciliation, of which he is a member, and to its action, in that there is perhaps a greater degree of responsibility. Third, to save expenses, because if the President were to go outside under the law and select the other members of this board, taking those receiving no compensation from the Government, the provision would have to be made for their compensation.

Senator BRANDEGEE. One other question and I am through. On page 4, in the second paragraph, you provide that—

> Either party to the said agreement may apply to the Board of Mediation and Conciliation for an expression of opinion from such board as to the meaning or application of such agreement, and the said board shall upon receipt of such request give its opinion as soon as may be practicable.

Of course, I am not familiar with the discussion that led up to the adoption of that language or the purpose of the draftsman, but I wondered whether that, if left as it is, would not be to a certain extent—you do not provide that the opinion of the board as to the meaning or application of the agreement shall constitute the interpretation of the agreement that shall be accepted by the parties, and I assume, therefore, that you intend that it shall simply have such moral effect as it is entitled to.

Judge KNAPP. You appreciate, Senator, that the proceedings in mediation are peculiarly voluntary; their purpose is to bring the contending parties together to a voluntary settlement. Now, that settlement will be expressed in writing; it will usually be a new wage scale. Into that will come perhaps a new provision with new language. When it is made and those who participated in making the agreement appear to be of one mind, that mind will be expressed in the language, but when they go out on this road or that road and come to apply the agreement the question arises, "What does this mean?" The manager says it means so and so, and the employee takes a different view.

Senator BRANDEGEE. I understand all that, of course, but my query was directed to bring out the reason for not making the opinion of the board of conciliation binding upon the parties as to the meaning of the agreement which has been arbitrated by them.

Judge KNAPP. This is not where there is arbitration.

Senator BRANDEGEE. I know; but it is the agreement by which they submitted to arbitration?

Judge KNAPP. No.

Senator BRANDEGEE. What agreement does it refer to?

Judge KNAPP. That applies to cases where they have voluntarily settled without arbitration.

Senator BRANDEGEE. It says an agreement reached through mediation.

Judge KNAPP. Yes; by settlement reached through mediation.

Senator BRANDEGEE. Well, mediation, then?

Judge KNAPP. Yes.

Senator BRANDEGEE. Why should the board of conciliation express an opinion about what the parties meant by an agreement for mediation?

Judge KNAPP. Because they have participated in that mediation, and that settlement has presumably been brought about by the negotiations in which they took part.

Senator BRANDEGEE. Then, why not make the opinion of the board binding upon the parties as to the intent of the agreement?

Judge KNAPP. Because the settlement itself is not binding except in their good faith.

Senator BRANDEGEE. Why not make it as binding as the agreement was?

Judge KNAPP. You have introduced an element of compulsion which we have been very careful to avoid.

Senator BRANDEGEE. The agreement is no more compulsory, you admit, than its appeal to the honor of those entering into it.

Judge KNAPP. Let me make another answer. It is to give legal sanction to what Commissioner Neill and myself have felt under a degree of moral obligation to do. We have been connected with a great many of these negotiations in which settlements have resulted and new contracts have been made, and it has quite frequently occurred that some question as to the meaning of that section was raised. For example, there was a settlement with all these southeastern roads relating to their conductors and trainmen, and it omitted distinctly and purposely the colored porters employed on passenger trains. The question came up on a given road. What is a porter? Not because he is colored, but what is a porter? They asked us to say what we though they ought to do in that case. We have volunteered in many cases to say what we thought was intended by the parties when they made the contract, so that this really is to give them the right to ask that opinion and sanction the giving of it for whatever effect it may have.

Senator ROBINSON. I merely wanted to ask whether there had been many cases in which the Erdman Act had been availed of since its passage.

Judge KNAPP. How many are there—about 60?

Dr. NEILL. Sixty.

Judge KNAPP. Or something more than 60.

Senator ROBINSON. It has in a large measure proved a practical remedy, then?

Judge KNAPP. Senator, believing that I know something about the conditions which have prevailed in this country in the last 10 or 11 years, to go no further back, I think it is most remarkable that in that period there has been no considerable strike on any railroad in the United States. It happens to be the fact that in no instance has a strike followed the intervention of the mediators. There have

been two or three instances of a purely local character having no general significance where they struck first and then invoked mediation afterwards.

Let me say in that connection now it has become a most onerous burden upon men appointed to other duties, which themselves have been growing in their importance and in volume, to add this to it. I only say this to illustrate, but this thing happened to come to me because I happened to be the chairman of the Interstate Commerce Commission when this law was passed or when it came to be actively administered, and I have sat up many a night until 3 and 4 o'clock in the morning conducting these negotiations in Chicago, in New York, in St. Louis, and elsewhere, and then have come back to Washington and worked nights and Sundays to catch up with the commission's work which I was obliged to neglect, and Brother Neill here was in a much more serious condition. It had become too serious a matter. It takes too much time. There is need, therefore, of appointing somebody who shall not be burdened with other duties and who can give this practically his entire time.

Mr. WEBB. I just wanted to ask the judge the difference in the fixed cost of the administration of the Erdman Act and the one you propose? How much more would it cost the Government to administer the proposed law than to administer the Erdman Act? I should like to get into the record some idea of the increased cost to the Government in passing this law.

Judge KNAPP. I will say $25,000 a year, because, you see, under the present law the mediators get no compensation at all. Now you are proposing a commissioner, who shall get $7,500 a year, and an assistant, at $5,000 a year. They must be provided with an office. They will have to have at least one or two stenographers and clerks, and there will be other miscellaneous expenses. I would therefore estimate the expenses of maintaining these two officials and their offices at, say, $25,000. The cost of arbitration would be practically the same as it is now.

Mr. CLAYTON. Judge, you said it would increase the cost by reason of the fact that this proposed bill creates a board of conciliation; creates new offices. Under the Erdman Act in its practical administration, now, officers who have other duties to perform—for instance, yourself as judge and Mr. Neill as a Commissioner of Labor—were detailed to act as a board of mediation and conciliation and taken away from your duties while you were discharging the duty of mediaton and conciliation. Is that not true?

Judge KNAPP. Precisely.

Mr. CLAYTON. So that, then, really, if we take that into consideration, it does not add anything to the cost.

Judge KNAPP. Yes; but we did not get anything for it.

Mr. CLAYTON. I know you did not, but you received your salary. That is what I mean to say. You received your salary, but the Government was deprived of your work in other capacities. That is what I mean to say.

Senator CUMMINS. I want to ask another question. Take this language:

> The President shall also designate not more than two other officials of the Government, who have been appointed by and with the advice and consent of the Senate, and the officials thus designated, together with the Commissioner of Mediation and Conciliation—

and so on. I will not ask about the meaning of that language, but I want to ask your purpose. Do you intend that, for illustration, suppose the President were to designate the Secretary of the Department of Labor, that if the present Secretary should give way to another, that then, ipso facto or ex officio, the new Secretary of Labor would become a member of the board?

Judge KNAPP. No, Senator; I think it is designed to make that quite personal; and you will observe that while the term of office of the commissioner is fixed, there is no term of office for the other two members. They practically, therefore, hold their assignment to this duty at the will of the President. He could terminate it at any time.

Senator CUMMINS. You intend, then, that the President's designation can be changed at any time?

Judge KNAPP. At any time. They hold that place at his will.

Senator CUMMINS. And that when made the person who holds the office at that time shall continue until the President makes another designation?

Judge KNAPP. I so understand.

Senator BRANDEGEE. Do you mean that he shall designate the Commissioner of Labor, and that when his administration should cease and the Commissioner of Labor should become a private citizen, he should still continue to be a member of this board of conciliation; or is it the intention that the board shall always be composed of men who are officials of the Government?

Judge KNAPP. Offhand I should say he would go out of office because the authority to hold it would cease.

Senator BRANDEGEE. I do not think your bill is quite plain about that. I think a question could be raised also as the President is bound to appoint officials of the Government to a position, but it does not make the holding of a Government office a necessary qualification to continue in the position. I think there might be some question raised there.

Senator CLAPP. That could be corrected.

Mr. BEALL. I should like to ask a question. Some years ago there was an industrial commission appointed. Was that before the passage of the Erdman Act?

Judge KNAPP. I should say since; that is my recollection.

Mr. BEALL. My recollection is that they suggested some kind of legislation. Do you know how near this conforms, if at all, to the recommendations of that industrial commission?

Judge KNAPP. I am not able to state.

Senator LIPPITT. I should like to ask the judge about how long a time has generally been occupied in taking the testimony in considering cases of arbitration?

Judge KNAPP. That depends so much upon the nature of the controversy that it is hard to say. I have known cases where the arbitrators would take all the testimony in a couple of days, and there have been cases where they were three, four, or six weeks. How long were you in this firemen's case?

Mr. CARTER. Thirty-one days, taking everything.

Mr. STONE. Fourteen days taking testimony and seven months getting the verdict.

Senator LIPPITT. How long after the closing of the testimony has the verdict generally been given? Promptly, as a rule?

Judge KNAPP. Where the arbitration has taken place under the terms of the Erdman law the award has been made almost immediately—very promptly. In the arbitration of the controversy of the engineers with the eastern railroads, which was, in fact, a common-law arbitration, outside of the law, as Mr. Stone just said they were 14 days taking the testimony and 7 months in getting the verdict.

Mr. Low. Might I suggest that Mr. Carter, president of the Brotherhood of Locomotive Firemen and Enginemen, be called upon next.

STATEMENT OF MR. W. S. CARTER, PRESIDENT BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN.

Mr. CARTER. Mr. Chairman and gentlemen of the joint committee, a question was asked of Mr. Low by what authority the personnel that made up this joint committee who have prepared this bill presented such a bill to Congress for its passage. Speaking for myself I will say that so far as the preparation of the tentative bill is concerned I had no authority other than that vested in me as president of the organization. Since the tentative draft was submitted by Mr. Low, and I understand it has been introduced in its entirety, the convention of the Brotherhood of Locomotive Firemen and Enginemen convened in the city of Washington. This tentative bill has been presented to that convention, made up of more than 800 delegates, and it has been printed in the proceedings. When I received notice of this hearing this morning I went before that body and stated the purpose of this hearing, the situation, as I saw it, affecting other organizations, and by unanimous consent I am here representing that organization in behalf of this bill.

I think, so far as the Brotherhood of Locomotive Firemen and Enginemen is concerned, there can be no question as to the bill being acceptable, at least to that organization. Now, do not understand that this organization waives any right it may have in future years to suggest amendments to this law, or to join with the others, but we believe that an emergency exists right now that demands immediate action on our part at least if not on the part of Congress. Fortunately for this action the emergency does not affect us. We have passed the emergency period and for the present at least are all right.

So far as these wage disputes are concerned, too, we recognize that two other organizations are in the identical position in which we were placed only a short time ago, and we recognize that unless some action is taken there is a strong probability of the greatest railroad strike the world ever saw. My understanding of the situation is that the Order of Railway Conductors and the Order of Railroad Trainmen have presented requests or demands, as they have been termed, for certain wage increases and improved working conditions. I understand that after negotiations with the conference committee of railway managers the committee agreed to disagree. I understand the representative committees of the conductors and trainmen proposed arbitration under the Erdman Act. If I am not misin-

formed the conference committee of railway managers absolutely refused to arbitrate under the present law. I understand that the members of these two great organizations of railroad employees are polling their men for a strike vote on more than 50 railroads because the railroads have refused to arbitrate under the present law. It appears to me at this time that you are going to see one of the most novel strikes the world has ever seen, a strike on the part of 80,000 railroad men because the railroads will not arbitrate under the laws of the land. It will be a novelty, but it will be none the less serious because it is novel. It is because of the contentions of the railroads that they will not submit so serious a problem to the dictum or conclusions of one man that this joint committee is made up of representatives of railroad employees, representatives of railroad corporations, and representatives of, you might say, the general public through the Civic Federation.

We believe that the emergency exists, and we believe that Congress should do something and do it quick. Now, I believe, as briefly as I can, I have expressed to you the situation. Personally we are not interested at the present. We realize that some day we may be interested again. We do recognize, however, that the conductors and trainmen are in the position where they probably will be compelled to strike, because the railroads believe that their interests would not be protected if submitted to arbitration under the law as it exists.

I said a while ago that while we were very favorable to the bill we recognize that there are some features of it that in the future might be improved upon, but it is an emergency measure so far as we are concerned. Something should be done immediately. For instance, in the 12th paragraph on page 7, if I had my way about it the first word would be changed from "may" to "shall," but rather than delay this bill let us have it as it is without the change of a single word. To me it appears that nothing is more important in an arbitration proceeding than that the disputes as to the meaning of the award should be passed upon by the authority that made that award. It seems absurd that a commission appointed under the provisions of law should make a finding, should reach a decision, rendering an award, and then leave to the railroads and their employees an endless fight as to what that award meant.

Now, I want to say to you to-day that while our award is passed we find ourselves confronted with the position that the railroads on the one hand can not agree on the meaning, which practically makes the arbitration null and void because they will not agree. For instance, the award specifically stated that hostlers should receive a certain compensation, $2.40 a day, if they are not employed on the main line. Since the arbitration award has been made public the railroads contend that these men are not hostlers. They have changed their name in many instances to engine repairers, and in many cases they have added to their duties and called them foremen. In other places they have taken from their duties and called them watchmen and wipemen. So that the result is that the arbitration award, so far as hostlers are concerned, has been made null and void by the refusal of many of the railroads to understand it. How we are ever going to settle that I do not know. Some of our men propose another strike. This strike will be to compel the railroads to live up to the award. We have proposed to the conference com-

mittee of managers that we convene the arbitration board again so as to pass upon this subject. The conference committee of managers have declined, saying that these differences should first be settled between the two representative committees. Our committee met in this city and we immediately acquiesced in their position and proposed a joint committee of our committees. We now have another reply declining to meet our joint committee unless we make more specific presentation of the matters.

I say to you that unless you change the word "may" to "shall," on page 7—the first word in article 12—then our men can be just as unfair. Do not misunderstand me—our men, the employees, can be just as unfair in assuming that a certain clause in the award meant something as the railroad officials, and I do not want to be misunderstood as saying that the fault lies with either, but probably with both.

The twelfth provision of section 4——

Senator CLAPP. It is on page 7, line 3.

Mr. CARTER. Unfortunately we have a great many different copies. Mine is on page 7 of S. 2517. Section 4 provides:

That the agreement to arbitrate, first, shall be in writing, etc.

These are stipulations:

Twelfth. May also provide that any difference arising as to the meaning or the application of the provisions of an award made by a board of arbitration shall be referred back to the same board or to a subcommittee of such board for a ruling, which ruling shall have the same force and effect as the original award; and if any member of the original board is unable or unwilling to serve, another arbitrator shall be named in the same manner as such original member was named.

Now, my suggestion is that that stipulation be mandatory rather than selective or optional, because where you have used all the machinery of the law to bring about an arbitration it would be indeed unfortunate if either the employees or the employer, in seeking to avoid arbitration, should assume a definition which was not satisfactory.

We are in this position: Our arbitration was under the Erdman Act. The Erdman Act makes no provision for referring such disputes back to arbitration. Therefore, if we had even this law, under the present act, it would be a great hardship on us.

We are in this position, gentlemen: The award is not being applied as we believe it should be applied. We have appealed to the committee of management to again convene the arbitration board so that they can decide it. They have declined, and suggested that the two committees meet and decide what the differences are, and if they can not decide the differences that then we go to the arbitration board.

Senator CLAPP. It is very evident, Mr. Carter, that you have opened up a matter that can not be concluded this morning on account of the House Members having to attend the session of the House, and I suggest that we take a recess at this time.

Mr. CARTER. I will have to leave. I can not return. I am supposed to be presiding over a convention of 825 men, and I have a substitute now. If it had not been for the interest of those 825 men in this hearing I would now be at the Arcade presiding over that body.

The CHAIRMAN. Can you not be here at 2 o'clock?

Mr. CARTER. I regret to say that I can not, and I have now said all I desire to say.

The CHAIRMAN. The committee will take a recess until 2 o'clock.

(Accordingly at 12 o'clock m. the committee took a recess until 2 o'clock p. m.)

AFTER RECESS.

The committee reassembled at the conclusion of the recess, at 2 o'clock p. m.

Mr. LOW. Mr. Chairman, may I ask that Mr. Garretson, who represents the railway conductors, speak first to the committee this afternoon?

The CHAIRMAN. The committee will be glad to hear Mr. Garretson.

STATEMENT OF A. B. GARRETSON, PRESIDENT RAILWAY CONDUCTORS, CEDAR RAPIDS, IOWA.

Mr. GARRETSON. Mr. Chairman, in regard to our connection with the Erdman Act and our interest in it—I am using the word "our" in the sense of the railway organizations—I want to draw your attention to this fact: In its original inception the Erdman Act was pressed to adoption by the five railway brotherhoods against the strong objection of all other labor bodies of this country. Consequently our interest in it is as old as the enactment itself.

The modification that was there presented was nothing except the crystallization of the experience that both interests, the railway companies and their employees, have had in its application so far. At the time the original act was passed collective dealing, as it is termed, had never passed the stage of one railroad company and one or two of the brotherhoods. There has been for very many years a common practice on the part of at least this organization of conductors—I do not mean of working jointly, for that practice predates the enactment of the original Erdman Act itself—but prior to 1903 there never was an instance where more than one railway company was represented in any deal of any character, and the most that were represented up to that period were four at one time, and that was not carried to a successful conclusion on account of the novelty of the idea, possibly, that those companies were unable to agree between themselves and break away after collective negotiations were made, and make individual settlements.

But in the year 1903 came the inception of the collective deals with a large number of the railway companies. In that instance 49 railways west of Chicago came under the provisions of the Erdman Act. It was many years before the arbitration feature of the act was ever applied, but when it was applied then it did not meet with the approval, especially of the employers, on account of the large responsibilities—the financial responsibilities—that were placed upon a single man as the arbitrator, on account of the insistence of the railway companies on a modification of that feature, we representing the men—and in this connection I want to supplement what Mr. Carter said this forenoon in regard to actual authorization. Mr. Carter told you that his body, the supreme body now in session, had unanimously authorized it. The supreme body of the order of railway conductors

closed on the 24th day of May. That body, with the exception of three dissenting votes, authorized the modification of the act along precisely the lines that are named here. The Brotherhood of Railway Trainmen, the representative of that organization not being present, but Mr. Stone, the engineers, and myself, holding plenary power to represent them—that organization was closed on the 4th day of June just past, and they likewise, without dissenting votes, authorized these changes; and I would further draw your attention to the fact that this committee that is named here, representing the railway companies and the organizations, did not agree on those matters haphazard; they met and conferred, and the modifications that are here presented are the outcome of the personal conferences held by the men there named, and it is the crystallization of the experience that all have had, because there is no man there named who has not had more or less experience with the application of both the modification and the arbitration features of the Erdman Act.

As far as the brotherhoods are concerned, the modification features are of far greater importance to us from our own standpoint than the arbitration. The arbitration is simply the final step in the event modification fails.

It is a matter of interest to every man who is engaged in any pursuit in which he depends upon transportation to know whether or not there is a means that can be availed of to avoid conditions that occasionally arise—to quote the language itself of the old act, the threatening of interruption of traffic—and those questions do arise in spite of the best will that there may be on the part of either the men themselves and those who are representing them on the part of the employer, because every man is conversant with the stress that arises when certain pressing interests of great amount are involved; and out of the friction of negotiation arises a condition where there ought to be—and we recognize it fully—some means that furnish an honorable road out for both interests. Those modifications are few in number. They are not radical in their nature. They are simply an adaptation of the Erdman Act to the changed conditions that have grown up since its original framing, and in this enactment are incorporated the best judgments of the three interests that have dealt with this question.

The success or failure of any act of this character will always largely depend upon the personality of the men who administer it, and unless those men develop the qualities that are necessary for successfully acting the part of mediators the act is not worth the ink that it took to print it.

That is the outgrowth of the experience, or the crystallization of the experience, of a man who has probably been as well Erdmanized as any living man.

My connection with the men who have acted as administrators has grown up under the application of this act, and it is the personal qualities of those men that have contributed so largely, first, to successful settlement, where the mediator is able to make a successful settlement on account of the peaceful qualities that invoke the confidence—absolute—of both parties, because mediation is absolutely founded on good faith and confidence, and no other features will

ever make it a success. It is the effort to strengthen the hands of men who have developed those qualities that are written in here.

The law provides that either party to the controversy may invoke the good offices of the mediators, but there has been at least one instance that has stood out more prominently than others where neither side was invoked. When affairs come to a stress, you will all recognize how loath either interest is to openly show its hand, and for fear of relinquishment of a strategic advantage one side or the other will not invoke the good offices of the mediators. Therefore it became necessary, in the opinion of all concerned, to provide that the mediator could, of his own initiative, tender his good services where neither side desired to bring it about, and it is a power that should be attached to the office for whoever may avail of it.

Moreover, one of the most prolific causes of trouble of this kind has been that when a settlement was effected, always in haste, always under strong mental stress on the part of both sides, even if not on the part of the mediator, there has arisen afterwards a difference of opinion between the employee and the employer as to what the terms actually meant, and there has been no means by which an interpretation—I mean a proper interpretation—could be given by the mediator. This embodies the power that on request of either he will interpret to give force to the findings.

Now, it may be said that you can not make it binding, and that is true. There is nothing in mediation that is binding except the good faith of the parties thereto, but there is not in the record of all the years that these provisions have been in effect an instance where there has been a vicious violation of faith on the part of either interest. Occurrences may have arisen where this or that party might be charged with not religiously carrying out the understandings, but it has been a matter of opinion, and there has never been, in my knowledge, a case where they could be willfully charged with bad faith. But it is to eliminate the point of difference that now exists.

The next section, section 3, provides that under certain conditions six mediators may be chosen instead of three, as under the present law. There is a point upon which the brotherhoods had but little interest. They are—well, you might say, good gamblers. They will throw the choice as quickly on the judgment of one man as on the judgment of two or three, but the men who had the same amounts at stake as they had, where they were scattered all around among a large number of men, insist that there should be a larger number of men. Any man who can put himself in the other man's place would recognize the justness of a position of that kind, the only point of difference between us at any period being as to how that board should be constituted, we insisting from start to finish that there can be only arbitrators from the three interests involved; that is, two from each of the two contestants and two from the third party, or three, as the case might be. That is our experience growing out of the engineers' arbitration.

Senator POMERENE. What do you mean by the third party—the public?

Mr. GARRETSON. The public. The public has an interest, bear in mind. We all recognize that the public has an interest whenever public interest is threatened. As long as public interest is not threatened, then it is a private war between employer and employees, but

the minute that the outgrowth of that private war threatens the public interest the public comes into exactly the same relation to it as we do, and their rights are as great as ours—some say greater. We say no, and we say that they are entitled to just the same representation on this board that the other contestants are. There is no question but that the two men we choose will be partisans. There is no question but that the two men chosen by the employers will be partisans, and since the questions handled by arbitration have been of this character you need men who are conversant with practical business, and that was never more fully exemplified than in the case where the engineers' arbitration board could not decide the simplest questions where a bunch of red-necked delegates sitting on a board proceeded to regulate matters. They were perfectly willing to handle heavenly bodies, but they could not handle a trade question, and our insistence is that there should be an equal number of men conversant with the questions that can be handled and that can not be run away with by a nonpractical body.

You know the proviso for adding these men does not make it obligatory that there should be six instead of three. It makes it one of the stipulations as between the contracting parties.

The third paragraph of the stipulations in section 4 provides that the stipulation shall state whether the board of arbitration is to consist of three or six members. That becomes a matter of agreement as between the parties. If a small matter arises of an old character, where only one road is involved, as can readily be the case, it leaves just the present number of men to decide it. On the other hand, if a large question arises, as is at present pending, it makes it possible to get the necessary number of men to deal with the proposition without placing undue stress upon the single individual.

The eighth stipulation of section 4 makes it a matter of agreement between them as to the time that may elapse. Under the present provisions of the Erdman Act a decision must be handed down within 30 days. Under the last arbitration that was held under the present act, where the firemen drafted an agreement between the contesting parties, they extended that time—I think it was extended to 15 days beyond the stipulated time. This provides that they can stipulate—if the conditions are such as to make it necessary—for a somewhat longer time, but in the absence of a stipulation it shall remain at the old 30-day period.

The ninth provision states:

> Shall provide for the date from which the award shall become effective, and shall fix the period during which the said award shall continue in force.

The old law provided the exact time that the award should remain in effect. This makes it a question of stipulation between the parties as to how long the award shall be in effect and when it shall take effect. Cases have arisen where it was necessary to date the application of the award back, a practice which has been recognized by both parties. This provides that it can be done, but it makes it a matter of agreement between the parties under the question of facts that are involved.

The twelfth stipulation gives the arbitrators the same power to interpret their findings as they had to make the original award. That is an unnecessary provision. To-day you hear the story that it took 14 days to give the evidence in the engineers' arbitration and it took

7 months to get the award, but neither party knows what they have got, and they have been trying ever since to get that body to interpret its own award, and it has not been successful. It has been doing this for three years, and some of them will be in their graves before they know what they got—some of them are now and the majority of them will be before they really know.

Section 7 provides, in addition to the other clauses in the stipulation, that the arbitration must confine itself to the matter that is submitted to it—the ordinary legal operation that they can not get outside of the finding. That necessity is the outgrowth of the engineers' award. The other clause is in regard to the machinery for making it effective.

Originally the Commissioner of Labor and the chairman of the Interstate Commerce Commission were the ex officio Erdman arbitrators. In fact, when the law was first enacted it was an experiment. There was absolutely no enactment of this character that furnished anything to go upon. It was doubted. It did lie absolutely dormant from its passage in 1898 until 1903.

Judge KNAPP. 1906.

Mr. GARRETSON. 1906. I got the date confused. It never was invoked. From that date to this it has been in active application, and there have been times when the inability of the mediators to get to the cases in question has almost precipitated trouble that was easily avoided after they were able to get onto the ground.

Laboring men, as you possibly know, are an intensely suspicious bunch of men. That is not only true of railroad men, but it is true of them in general. Whenever any impediment is laid in the way of effecting a settlement at a time of stress they are prone to believe that there is a motive behind the delay, no matter how reasonable that delay may be, and after they learn to verify all the facts then they lose that feeling. But the trouble is the feeling is existent at the time of other stress that makes them hard to control, and the man who has tried to control them at times like that is a man who knows best how hard they are to control. It makes a department independent for the purpose of dealing with the application of the Erdman Act alone. It provides not only a commissioner but an assistant commissioner, and associated with them two officers of the Government who shall be available for the same purpose in their aid, and does away with a large amount of delay, and if that goes on and in its future application grows as it has grown in years gone by, it will need still further additions along the same line to make it possible to meet those cases promptly as they arise. But it is believed that the force here named is sufficient for a considerable period to meet the demand that will be made upon that department.

Now, a word in regard to the things that tend to make this a desirable change for the settlement of the trouble. I spoke a moment ago in regard to the mediator being able to develop the qualities that are necessary. If he were handicapped with certain features, though he had all the other qualifications necessary for a successful mediator, he would have to live down some handicaps before he became useful. You can readily understand it. Take it from the divided standpoint of the employer and the employee, that no railway company would accept a laboring man as a mediator—I am not speaking of arbitration at all, but mediation—as mediator. Until he had proved

himself able to rise above the environment that created him he would be useless. No number of employees would accept a mediator who came from the railway ranks, no matter how good his record—I mean the official ranks, and what is true of the labor end of it is absolutely true of the political end. The effort here is to make this department absolutely free from all entangling influences of that character and put in it a man who will have just as little dead weight as possible to drag in getting his standing with the two interests.

Take the men at present occupying the position, the former Commissioner of Labor and the former chairman of the Interstate Commerce Commission, now chief justice of the Commerce Court. Those men can go in when strife runs the highest, when suspicion is rampant, and from the record that they have both made in the years they have devoted to this they can get a hearing when a rank outsider could not even get a look-in. And why is it? It is because they possess the qualities that they have—not freedom from criticism, because I will say to you that I have seen the time when I believed manslaughter was not a very serious sin—and I would have directed it against both commissioners with a perfectly clear conscience. [Laughter.] But I have one comfort at the same time. Probably, the next time we were conferring, there were 10 general managers who would have resented bitterly if I had killed them. They wanted to do it themselves.

There is a spirit that enters into these negotiations that while we criticize them we still admit their fairness, and we can always appeal from Philip drunk to Philip sober and give them great credit for the ability that they have shown to run straight. We want them just as free from politics and as free from the taint of either the employer or employee as possible, but we take a peculiar position in regard to those men. You hear the idea go forward about the labor men doing this, that, or the other thing. We are all on record that we do not want a labor man as a mediator—I mean the four chiefs of these brotherhoods. The brotherhoods themselves are with them and are backing their judgment. We do not want a labor man there because he would have to overcome the handicap, even if he were big enough to rise above it. As years run by he would be turned to until he demonstrated that fact. We do not want an employer there. What we want is an outsider of standing. Put men under this act who have never been identified with the employing class or the employee class. We want to leave the administration of the act just as free in years to come as in the days gone by. It is simply the crystallization of this purpose and that is why the act is framed as it is, leaving this department exactly like the Interstate Commerce Commission itself—free and independent. If it is under the control of the Secretary of Commerce it would be subject to the belief on the part of our men that the Secretary of Commerce, representing naturally the employer class, might exercise an influence in the control of the men. On the other hand, we recognize that if it was under the control of the Department of Labor, that the other side would be just as much justified in claiming that labor might be able to influence the appointment of the men. But we do not want that. We want it absolutely independent and responsible to the President of the Republic alone. In that I am speaking only for——

The CHAIRMAN. You mean an independent commission?

Mr. GARRETSON. An absolutely independent commission, as free from control as it is possible to make one.

The CHAIRMAN. Has there been any contention that this organization would be affected under the Department of Labor?

Mr. GARRETSON. How is that? I did not understand you.

The CHAIRMAN. I say, has there been any contention that this organization would be affected under the Department of Labor?

Mr. GARRETSON. Not that I know of. The attitude of the department I can not speak for, because I have heard no expression from them on the subject.

The CHAIRMAN. The brotherhood would be opposed to that, would they?

Mr. GARRETSON. Bear in mind that the brotherhoods are opposed to that for this reason: I do not want a mistaken opinion drawn from that. These organizations have always been on friendly terms with the men who have filled that office from the day it was created. There is not a man in existence to-day who has the greater friendship or greater regard of all these organizations than the present Secretary of Labor, and the proof of it is that every one of the heads of these organizations strongly and absolutely indorsed him for the position he holds. Do not get the idea that our attitude in this matter is on account of any question of either his fairness or his ability. It is the handicap of labor dominating it that we do not want the other side to be able to take advantage of. That explains our position.

The CHAIRMAN. I understood that to be your position.

Mr. GARRETSON. Absolutely so.

Mr. LOW. May I interrupt you to say that in the conference which I had the other day with the Secretary of Labor, while he did not commit himself formally on that point, I think he does hold the view, or intimated that he might hold the view, however, that the organization should be in that department.

Mr. GARRETSON. In that conference, I will say, Mr. Chairman, as Mr. Low has said, he gave no definite statement one way or the other, but I would draw the conclusion that he felt that the department would lose a portion of its dignity if it was shorn of a bureau that he felt properly belonged to him. Now, I might have done him an injustice in so interpreting him.

The CHAIRMAN. Your position or the position of the brotherhood is that they want an independent commission, somewhat resembling the Interstate Commerce Commission?

Mr. GARRETSON. Of exactly the same nature.

Mr. ADAIR. Under that department or bureau, but independent and only responsible to the President?

Mr. GARRETSON. Only to the President. That is what this embodies, and that is the idea underlying the formation of the amendment as offered.

Now, if there are any questions by members of the committee I shall be glad to answer them.

Senator POMERENE. I am laboring under a disadvantage in not having been here this morning and I do not therefore know what ground has been covered. Who drew this bill? Does that appear in the record now?

Mr. GARRETSON. No; I think not. It may in some indirect form. The bill was drawn after a conference at which the gentlemen named on the back were present.

Senator POMERENE. Just name them.

Mr. GARRETSON. Those are in the record already, and this was formulated as the outcome of the conference between them.

Senator POMERENE. Does this meet with the unanimous approval of all of those gentlemen?

Mr. GARRETSON. It meets the unanimous approval of all of those gentlemen and a large number of other railway companies, of the brotherhoods that were affected by its provisions, and of the two administrators of the Erdman Act during all the years that it has been in existence.

Senator POMERENE. I have been so much occupied since this bill was introduced that I have had no time to either read it or study it. Can you state briefly what, if any, objections have been urged to this bill?

Mr. GARRETSON. I have never heard a single objection.

Senator POMERENE. And do any objections occur to you?

Mr. GARRETSON. They do not. Bear in mind that when I say they do not I will say that no body of men—it is impossible that with a number of men who have controlled men as many years as they have there would not be some minor preference as to this, that, or the other——

Senator POMERENE. I mean as to the fundamental features of it.

Mr. GARRETSON. Yes, sir.

Mr. WEBB. I notice the absence of any men representing the Southern Co. or the Seaboard Air Line or the Coast Line. Is there any significance in that on the part of the railroads?

Mr. GARRETSON. There is not, in my opinion. Mr. Low, the representative of the railway companies, can give you fuller information than I can as to that. But I will say this for at least the representatives of these three roads, I will make the representation personally—Mr. Copeman I can make it for, Mr. Weeks, who was formerly general manager, and Mr. ———, of the Coast Line—that they are all believers in and adherents of the Erdman Act, and they are also believers in its modification to a certain extent, but how far they have gone I can not say.

Mr. WEBB. You speak for the conductors in regard to that.

Mr. GARRETSON. I speak for the conductors only, and, in a sense, for the Brotherhood of Railway Trainmen. Mr. Stone and I are representing the executive of that organization.

Mr. WEBB. And they are conductors and trainmen on these various systems?

Mr. GARRETSON. They are the conductors and trainmen on all those systems.

Mr. WEBB. And it includes the Seaboard Air Line and the Coast Line?

Mr. GARRETSON. Oh, yes, sir. The two organizations represent more than 90 per cent of the men engaged in this service on the continent.

Mr. Low. I think, Mr. Chairman, that Mr. Wickersham, the president of the Atlanta & West Point and Western Railway of Alabama, is chairman of the Southern Railway Association.

Mr. GARRETSON. That is right. He is.

Mr. LOW. Which includes the Seaboard Air Line and the others, and he was one of those who framed this bill?

Mr. GARRETSON. There is another point that I desire to call attention to, and which I failed to touch upon until my attention was called to it, and that is urgency. You heard the statement made here this morning—but I do not want to make the suggestion exactly in the same sense that it was made this morning, but the urgency feature of it is only this. The public is usually quiescent until its interests are threatened, and then, in its character of neutrality or nonpartisanship, it usually gets in a wholesale condemnation by both the parties who threaten its peace. I have had some experience in that line, as I have once or twice in my life threatened its peace—but they denounce both the railway companies and the organizations because they will not settle their own differences. But the public awakes only when the threatening is right at hand.

The urgency of the situation is this: You will remember, a year and a half or two years ago, when interruption of traffic was threatened out of the engineers' attempting to gain an increase in wage, the public took great interest for a few minutes. The minute the agreement for arbitration was signed the public lost interest. Following that the firemen were confronted with the same condition, and again the public awoke. I am drawing attention to the fact that the public is due for another awakening within two weeks. The conductors and trainmen on 54 lines of railway, covering the eastern territory, whose boundaries you heard described this morning—every line of prominence, in other words, upon the New England seaboard to Chicago, north of the Ohio River, between there and the Lakes—the conductors and trainmen representing 80,000 men in those properties have disagreed with a committee of 10 or 15 general managers representing all those properties, and have failed of a settlement. Failing earlier to settle, we made a proposition, square toed, that we would arbitrate the proposition in exactly the same way as those propositions that have been disposed of with regard to the engineers and firemen, that we would arbitrate it under the now Erdman Act. Absolute refusal was all that was received therein.

Those men are being voted as to whether or not they will return to the service of those companies. That vote is returnable on the 1st day of July. Immediately following that, on the 2d and 3d, there will be a final conference between the representatives of those men and the representatives of the railway companies, and it might readily constitute urgency.

Mr. WEBB. Have you any assurances from those railroads that if this bill should become a law they will take advantage of it and settle the differences?

Mr. GARRETSON. I have not. I desire to convey no false impression. Bear in mind that in the refusal to arbitrate under the present Erdman Act there was no reference whatever to a modification of the bill.

Senator POMERENE. You made a statement awhile ago that under this bill, if employers and employees should both fail to invoke the provisions of it, that then the mediators might tender their services. There is no obligation on the part of either to accept this invitation, is there?

Mr. GARRETSON. There is not, but I will say this to you, Senator, that there has never been a refusal. Doctor, in the northwest, did they refuse?

Dr. NEILL. Yes, sir.

Mr. GARRETSON. I want to correct that, and say that there has never been but one instance where it was refused. I will try, from my own experience, to show you what sometimes takes place. Not many years since one of the large railway systems in the eastern territory, Mr. Lee, Mr. ———, and myself were engaged in a wage contest. At a certain stage, when it came to a point where traffic was threatened, a high officer of that property made the proposition to us, "Will you join me in a request for mediators?" If you know anything of men, I know you realize that sometimes a condition will exist where even the courteous entertainment of a proposition like that jeopardizes control over those men. I refused and so did Mr. Lee.

Senator POMERENE. The fact remains that while both parties are here urging this legislation, neither one would be in a position to keep the favor of the public if they would refuse to accept this provision.

Mr. GARRETSON. They would undoubtedly bring condemnation on their heads in a greater or lesser degree. There is no doubt about that. The proviso that you refer to was the authorization of a mediator to tender his services. There is no wiser amendment embodied in the entire lot than that.

The CHAIRMAN. Mr. Garretson, it has been suggested that on line 19, page 13, about the middle of the sentence, that the words "not more than" should be stricken out.

Mr. LOW. And shall also designate two other officials of the Government.

Mr. GARRETSON. You mean that portion of the section providing that "the President shall also designate not more than two other officials of the Government"?

The CHAIRMAN. Yes. The suggestion is that those words "not more than" should be stricken out.

Mr. GARRETSON. So as to make it read "Shall designate two other officials"?

The CHAIRMAN. Two other officials.

Mr. GARRETSON. Well, to tell you the truth, that is one of the minor matters that I know little underlying the reason for beyond the fact that it was desired that three should be available, more especially, I think, in the appointment of arbitrators—in designating the arbitrators in the event of failure to agree.

The CHAIRMAN. You can not designate three under this section.

Mr. GARRETSON. No; but the commissioner himself constitutes the third. These are the two other officials that are designated to act with him, the commissioner and two others constituting an odd number.

Mr. LOW. I do not think there would be any objection to the omission of the words "not more than," so that the President could appoint two.

Mr. GARRETSON. There is nothing germane in it, really.

The CHAIRMAN. You think there is no objection to leaving out those words?

Mr. GARRETSON. As far as I am personally concerned, I do not see that there would be. It would simply make the appointment of two partisans.

The CHAIRMAN. In other words, it could be one or two.

Mr. GARRETSON. It could be one or two as it stands. I would just as lief have it absolutely two, personally speaking.

Mr. MCCOY. What has been suggested as the advantage of the change?

The CHAIRMAN. Will you state that, Mr. Low?

Mr. MCCOY. You, Mr. Chairman, said that somebody had suggested striking those words out. What did they suggest would be the advantage of striking them out?

The CHAIRMAN. I do not recall. It was suggested during the recess by some of the gentlemen who were in the room and who had taken part in the shaping of this bill.

Mr. GARRETSON. Really it is immaterial, it seems to me, in any event.

Mr. LOW. I suppose the only advantage in making it two would be that there would be a board of three to appoint disinterested arbitrators. I think it is quite immaterial whether it is changed or left as it is. I do not think there would be any objection to the change, if the committee should prefer that.

The CHAIRMAN. I simply wished to get the sense of the gentlemen who framed the bill. I would like their views regarding it before making any change.

Mr. LOW. I think it has been rather assumed that there would be a board of three, the President to appoint two, and in that sense the omission would carry out what has been the expectation. If it is put in this way, it would simply leave the President a little more leeway in his action, so that if he preferred to appoint only one he could appoint only one. But I think the expectation has been on all sides that he would appoint two, and for that reason it is perhaps better to leave it out.

(Mr. Garretson was thereupon excused.)

STATEMENT OF W. W. ATTERBURY, VICE PRESIDENT PENNSYLVANIA RAILROAD.

Mr. ATTERBURY. Mr. Chairman, I have but little to add to what has already been said. I simply desire to emphasize the urgency of the situation and the necessity for this legislation, if possible, to be put through at the present session of Congress.

Early in the year we had a situation as between the firemen and the railroads, and Judge Knapp, I think, knows quite well how close to the breaking point it came, and the railroads finally, in deference to public opinion, gave in, and the whole subject was submitted to arbitration under the Erdman Act.

There are some 90,000 men employed in the train service to-day on the 54 railroads that are having a strike vote. That vote will be in the hands of their committeemen on July 1. It will be before the conference committee inside of the first week in July, and I have no doubt at all but what the railroads will again take the position that they can not arbitrate under the Erdman Act. The 90,000 men, whom I judge are in this movement, are drawing something like

$90,000,000 a year, which, at 1 per cent, is $900,000 a year, and as the fulfillment of the Erdman Act is finally dependent upon the opinion of one man, it is the judgment of the railroads that that is too much to leave to one man. They have asked for a modification of the Erdman Act, and while there has been a difference of opinion among the railroads themselves, yet there has been a difference of opinion among labor leaders themselves. The present modification, as proposed, is in a measure a compromise, and yet it is one that all parties have been willing to accept in lieu of the existing Erdman Act.

The Erdman Act has been successful for the last five or six years, but it is due to the personal equation of Messrs. Knapp and Neill. Their handling of all the controversies that have been submitted to them has been of such an impartial and fair character that they have gained the respect not only of the railroads but of the employees of the railroads. We recognize that the personnel can not always continue. As in the case of the firemen, we stood there for a few days with practically nobody to represent the public through the organization of the Erdman Act. We do not want that situation to occur again, and this, I think, puts the whole thing in shape so that there never can any contingency arise where there shall not be men on the ground to represent the Government, and that in case of arbitration the public is given the opportunity to be represented by more than one man.

I can only urge that speedy action be taken, so as to make this available, if possible, for the emergency that I am sure will arise the early part of July. I can hardly speak with authority for all the railroads, but I can say for the Pennsylvania Railroad, which probably will represent some 25,000 of the men in interest, that it will be very glad to submit the points at issue now between the conductors and trainmen to a board constituted as outlined in accordance with this proposed act.

Mr. Low. And you think that can be taken for granted as to all presidents who have taken part in this bill? Of course, it was impossible to confer with every railroad.

Senator Pomerene. Your statement indicates, of course, that you desire this bill passed. Do you know of any objections that are being urged against this bill by any of the railroad companies?

Mr. Atterbury. I have not heard one word whatever in the way of objection to this bill. I have my own opinion, and we all have our opinions, as to the make-up of the bill. But I want to say, frankly, that I am satisfied to get what we are getting here. Now, after a few years' experience with this, both sides, or all sides, may be again desiring a modification, in which event we will be very glad to come again and request a further modification if experience should prove its necessity.

Senator Pomerene. Do you know of any serious objections that are being urged on the part of any of the employees against this bill?

Mr. Atterbury. None whatever.

Senator Pomerene. So that, so far as you now know, if this bill should become the law, both parties would be willing to accept its provisions?

Mr. Atterbury. Although I am not speaking by authority, it is my belief and my opinion that if this bill were to become a law the

railroads in the eastern territory would accept arbitration under this, when they will not accept arbitration under the present Erdman Act.

Senator POMERENE. I simply wanted the record to show who was disposed to have any objections, if there were any.

Mr. ATTERBURY. I speak with authority for our own railroad. I am simply giving my opinion for the other roads.

Senator POMERENE. I wanted to leave as little excuse as possible for people hereafter, if this should become a law, to not accept its provisions.

Mr. LOW. Mr. Chairman, I think this bill was drafted originally by Judge Knapp and Dr. Neill, who have had the personal administration of the Erdman law as representing the Government. As you have heard from Mr. Garretson, it was discussed afterwards at a meeting at which most of these gentlemen were present. I think if Dr. Neill can be heard now we would get full and clear information in regard to the measure and the reasons for its present form.

The CHAIRMAN. The committee will be glad to hear Dr. Neill.

STATEMENT OF DR. CHARLES P. NEILL, FORMERLY COMMISSIONER OF LABOR.

Dr. NEILL. Mr. Chairman, in regard to this bill I might say that I have taken part, with, I think, one exception, in every mediation proceeding since the act was first invoked, until the 1st of last February.

While the bill is the result of an emergency, I might say that before this emergency arose both railroad managers and railroad brotherhood representatives had frequently discussed with Mr. Knapp and myself the defects in the present law, and as far back as three years ago we began, in individual conferences with managers and representatives of the organizations and without calling any meetings, to draft a new bill. At the time when a coal strike was threatened a year ago last April, a bill was introduced in the House extending the existing Erdman law to include coal mines. The bill was referred to the Committee on Interstate and Foreign Commerce, and Mr. Knapp and I were asked to appear before the committee, and we said to them that if it was going to be extended at all the machinery would have to be changed, because the two men who had these duties imposed on them, in addition to their other duties, could not possibly do the work. We were then asked if we would draft a bill, and we drafted a bill substantially the same as the present bill. Nothing came of it at the time. The threatened strike was averted and no crisis arose. But about a year ago, in April, 1912, a crisis did arise—a very critical situation arose in the eastern territory. The engineers on every mile of railroad practically from Chicago to the Atlantic Ocean and north of the Chesapeake & Ohio Railroad presented demands to those railroads which the railroads refused to grant. After negotiations lasting a considerable time, the engineers served an ultimatum on the roads that unless they either conceded their demand or made a counter proposition that they could consider, they would go out of the service, and I think there was only 48 hours left.

At that time, because of the fact that each side felt that any request made for mediation might be a practical disadvantage to the side

making the request, neither side was willing to invoke the law; and Judge Knapp and myself, in view of the critical situation with a strike possibly only 48 hours off, which would paralyze the eastern territory, took it upon ourselves to tender our friendly offices, for which we had no authority whatever in law. Those offices were accepted, and we then took up the mediation of the dispute. It reached a point where both sides expressed an entire willingness to arbitrate, but the engineers' committee was still unwilling to arbitrate except under the Erdman law. The railroads were utterly unwilling to arbitrate a case as important as that with only one disinterested arbitrator—and I might explain there, to make the matter clearer, that in the six years past it has been invariably the case that the arbitrator appointed by the men would be a representative from their own organization; their own official. The arbitrator appointed by the railroad would probably be their own general manager, so that in effect the board consisted—and I am not saying this in an offensive sense—of two advocates and an umpire. Personally I think that was the only thing they could have done. I think it is absolutely essential that in deliberations after the hearings are closed there should be representatives who knew exactly the result of this or that particular decision because their contracts are extremely complicated and an unfortunate decision of the board unfamiliar with the practical details of their contract might so upset the workings of the organizations of the railroads as to be simply disastrous.

The railroads were unwilling utterly to arbitrate under the Erdman law. Mr. Knapp and myself then brought every possible pressure on Mr. Stone and his committee, and finally induced them, much against their own judgment, but still out of regard for the public interests that would be affected disastrously by the strike, to accept another form of arbitration outside of the Erdman law. That settled that case, but shortly after an identical situation arose with the firemen. Again the firemen expressed a willingness to arbitrate under the Erdman law and the railroads again declined utterly to consider that law on account of the fact of their being a board of only three. As a result of the engineers' arbitration the firemen were not willing to make the concession which the engineers made. They felt that their organization would not sustain the committee if the committee took it upon itself again to submit to arbitration outside of the Erdman law. The committee said to us time and again, "We do not care whether it is a board of five or six or seven or any number; we will accept any board that is provided by law, so that we will have arbitration under sanction of law." The railroads said, "We would prefer the sanction of law ourselves, but we will not arbitrate with a board of three constituted as provided in the present law."

In this instance the railroads, in consideration of the disaster that would result to the public, finally agreed to accept the board of three under the Erdman law. Thus in one case the engineers conceded the railroads' demands and operated outside of the law. In the other case the roads yielded to the firemen and arbitrated within the law. The roads say they will not again arbitrate under the present law and the men say they will not again go outside of the law.

As has been explained to you, on the 1st of the next month the situation that has arisen twice will arise again, and I may say frankly that I think Mr. Carter and the firemen were absolutely right in refusing to go outside of the law, but I think the roads were equally right to refuse to arbitrate under the law. If I represented the men, I would not arbitrate outside of the sanction of the law, and if I were the railroads I would not submit to the arbitration of a board of three, as provided in the present law.

Mr. Knapp and myself have had imposed upon us the responsibility, I believe, of naming every arbitrator who has been named under this law since the beginning, with probably one exception. We have felt strongly the defect in the law of allowing only one arbitrator. There has been no duty that we have been called upon to perform that has been the burden to us or worried us like the appointment of the third arbitrator. It is not like a law case, because there the judge is limited by the law. Here is a case where the personal whim or the personal idiosyncrasy of the arbitrator has perfectly free play. There is no limit. He can do whatever he wants to do, and nothing can restrict him. But no matter how good a man he may be, no matter how much we may believe in him, we do not know what idiosyncrasy he may have or what kind of an award he may give, and we realize that we, in a sense, will be held responsible for the arbitrator decision.

I have the feeling that if you appoint two or three men you distribute your risk. In other words, you are pretty sure that out of two men or three men you will get something near to what represents the common-sense viewpoint. We could not be sure of that with one. We are not likely to get two men who have the same peculiar idiosyncrasies.

After this crisis arose last year the Civic Federation took the matter up, realizing that it was a very critical situation that ought not to have arisen, and they took up this matter and got a committee representing, as you have seen here this morning, a number of roads and the brotherhoods concerned. Mr. Knapp and myself also served on the committee. This bill was the result of the deliberation of that committee, and it represents the experience of the last seven years under the law.

A question was asked by Senator Pomerene if there was any objection to this bill. There are minor objections to nearly every provision; that is, each one of us would have preferred some slight modification in this, that, or the other feature.

Senator POMERENE. I had in mind any fundamental objection.

Dr. NEILL. Some thought there should be as many as nine; some thought that five were enough, but this represents what all have agreed to as a fair and satisfactory bill, by and large.

I might make this further statement: The question was raised this morning with regard to an odd number of arbitrators. In the first place, that is one matter that could not be agreed upon by the committee. The committee did agree to a board of six, but it was suggested that they might deadlock. There is no more possibility of their deadlocking than a board of seven or a board of three. It takes a majority to make an award. Now, under the board of three the railroads have appointed one man, who has usually been general manager of the road. The organization appointed one man, who

ordinarily has been an officer of the organization. A third man has been appointed by Mr. Knapp and myself under the act. You can get a deadlock now. You might have three of them deadlocked. If you get seven, and the three who represent the public framed an award which was unsatisfactory to each side, the other four may refuse to join them.

But I do not believe it is a practical possibility that the six would deadlock. Each side is equally interested in getting a solution. With the two neutral arbitrators you could very easily frame a proposition which one or the other side would have to come over to. If they can not get two over, they probably can not get one over, because the two representing each side would be partisan, and it is going to be as easy to get two as one. So that speaking with intimate knowledge of the workings of the present law, I do not think a possibility of a deadlock with six is a matter of any consequence. I think that the provision to appoint an umpire would be a very dangerous provision in this case. I think the original arbitrators would not then try to get together. Suppose they found they were somewhat wide apart, If they are all working for a settlement, they will reach an agreement between themselves, the six of them, which is one likely to be satisfactory to both sides, although it may not be all that either side wants. But with an umpire, as Mr. Garretson said, and very well said, they will take a "gamble on it." They will say, "We won't accept this compromise; we will take a gamble by bringing in an umpire," and I think by adding an umpire you would simply accentuate the possibility of difference and prevent them from harmonizing their differences and coming together with a settlement which would be a fair settlement.

I might add that this bill is practically the present Erdman law with only two serious modifications. There are a number of minor modifications that have been referred to, but there are only two serious changes as far as the principle of the act is concerned. The first fundamental change is the one allowing a board of six instead of a board of three. The second is one that changes the personnel. It changes the nature of the board—and I am very glad that Secretary Wilson has come into the room, because this is a matter upon which I am glad to have him present while the discussion takes place.

Now, there is less change there than there really seems to be. As Mr. Garretson said, we have discussed all the morning the arbitration feature of the act. The arbitration feature of the act was the least important feature. Of the sixty-odd cases which have been handled under the act probably three-fourths of them have been settled through mediation, and that will be the experience in the future. Only one out of seven or eight has gone into arbitration, and of those that went to arbitration. many of them have had three-fourths of the points in dispute settled by mediation before the arbitration took place.

Now, the present bill creates a separate commissioner to handle the work. The present law provided originally that the chairman of the Interstate Commerce Commission and the Commissioner of Labor should, upon the request of either side to the controversy, act as mediators and try to bring about a friendly settlement, and if unsuc-

cessful to try to bring about an arbitration under the terms of this act.

The question was asked me this morning why in drafting this bill this work was taken out from under the department. That work was never really under any department. The law says the chairman of the Interstate Commerce Commission and the Commissioner of Labor shall act. From the first time the law came in operation I have been the Commissioner of Labor, and I have served under three Secretaries. I have taken up with each of them the question of his understanding of the Erdman law, and his understanding and mine agreed, that the Commissioner of Labor was designated by the law to serve on a board entirely independently of the Secretary of Commerce and Labor, and had it been otherwise I would have refused to serve, for the reason that no man can get out that kind of work and assume the responsibility that he has to assume—and perhaps here I had better explain that it is inevitable in carrying on this work that the two sides shall never meet together. The mediator meets one side and then the other.

It is understood always that if the mediation fails there is a possibility or probability of arbitration. Each side, realizing that, is reluctant to make any offers. Very often the mediation is brought about for that very reason. In their direct negotiations prior to invoking mediation each side feels if it begins to waver and make offers that probably instead of bringing about a settlement it will block a settlement, because the other side will feel it is weakening, and if the second side stiffens up it will win out. So each side is jockeying for position. We realize that if we sat with them together the situation would continue. So we adopted this plan—and to that I attribute the entire success of the work—to meet them separately. We say to them, Whatever offer you make to us will never be made known to the other side unless your mutual concessions bring you into agreement. So if we withdraw from the mediation without effecting a settlement and you go to arbitration, neither side has prejudiced its case in the slightest.

We talk over the differences with the two sides, and up to the very end neither side has an idea as to just what the other side is willing to do, but we keep hammering and hammering until they will make this concession and that concession, and as they make concessions we know how near they are to coming together.

That method is absolutely essential to carrying on the work, and yet it places in the hands of mediators a very large power in directing the character of settlement, and it places upon them a very, very heavy responsibility. You are meeting two groups of men who have sometimes been in session weeks and weeks, both sides—speaking in the vernacular—"seeing red." The situation is very tense. Their feelings are running high, and there is a high nervous tension. They are very suspicious. They are determined. It requires extreme patience and cool and quick judgment to handle cases, and very often you may find, as a result of five minutes' talk, a sudden change has taken place, the attitude of one or the other side has shifted, and you will find that to make a given settlement is hopeless. You carry a very heavy responsibility, and I, for one, would not try to work one second unless I were independent. If I were not absolutely free to handle that case as I felt necessary without responsibility to anybody,

I would not undertake the work, and no man who does undertake it can succeed except under those conditions.

Now, more than that—and I say this with the utmost respect, not only for Secretary Wilson, but for every Secretary under whom I have served, and I have served under Secretary Metcalf, Secretary Strauss, and Secretary Nagel, and for a short time under Secretary Wilson—I believe that that work must be made independent for another reason, and perhaps it is a more important reason than the one I gave first: The law is not worth the paper it is printed on if neither of the parties invoke it, and they will not use it if there is the slightest suspicion that any political consideration is going to play a part in the settlement.

Now, I want to go on record as saying emphatically that there has never been a Secretary under whom I have served who would be swayed in the slightest by any political consideration in the appointment of arbitrators, but I am willing to say, just as emphatically, that frequently in cases occurring just on the eve of a political campaign you could not convince one or the other side that political considerations had not played a part in the selection of the umpire, where that selection is made by men holding positions bearing the relation to partisan politics that Cabinet positions do.

I want to go further and say more than that, it is not a fair burden to put upon the Secretary. I have had to appoint arbitrators and I know how the appointer feels. Assume the appointment of an arbitrator is going to be made just preceding election. Assume a case involving fifty or sixty thousand men, and their affiliation and friendships mean half a million more. There is likely to be political pressure brought on him to appoint arbitrators who will decide "the right way," because, as I said a while ago—and I think Mr. Knapp will sustain me in it—right or wrong, a decision of the arbitrators falls back upon the shoulders of those appointing him, and if the Secretary appoints a man—a perfectly fair man who makes an award favorable to either side—the side that loses would, in a measure, hold him responsible. I do not believe that anyone who has to consider partisan politics should have anything to do with the handling of these cases or the naming of the arbitrators.

On that account I have advocated protecting the position of commissioner of mediation so there would be no question of its independence, and I feel this so strongly that I believe the position of the mediators should be for a term of 7 or 10 years and removable only by impeachment. I will go still further and say that I have been embarrassed in cases by the open suggestion that one party was reluctant to have me take part in the naming of arbitrators for fear that the President or Secretary might attempt to influence my action, because I was not independent in my position. These are things that have actually happened, and I believe that there is nothing in which the suspicion of politics is as deadly to the success of the work as it is in matters of this kind.

The question was asked this morning why these other two were to be in the Federal service. It was felt that the commission ought to be as inexpensive as possible. There is no occasion for three men sitting around with their services called for probably only once in two or three months, but the work has developed to the point where it is impossible for any one man to occupy the position of Commis-

sioner of Labor and continue that work. I continued it until I had a complete breakdown in health. After that time I had at times practically to abandon the Bureau of Labor. It was unfair to me to hold me responsible for a bureau which I sometimes did not see for more than 30 days in a period of four or five months. From the 15th of last September until the 1st of February I had less than three weeks in the Bureau of Labor. Now, that is unfair to the bureau and it is unfair to the Commissioner of Labor. More than that, it is unfair to this work. There is enough work to occupy one man busily the entire time. Between the mediation cases there is a large amount of work that has to be done, and with this new provision for compelling mediators to give opinions the work will increase very largely. I suppose there was hardly a month, and in later years there was hardly a week, when we did not get a letter from some railroad or from some organization sometimes referring to an agreement entered into six or eight months before through the mediators asking if we would give our interpretation of this or that rule. There would some difference of opinion arise between the manager and the men on a question, and one or the other side would write to us for our opinion. That has very much increased the work, and the idea was that the commissioner of mediation and conciliation could probably alone handle one-half the cases. The other member, or two members, would probably be called upon very seldom except when it came to a question of appointing arbitrators, and they would take part in that, but that takes very little time. So there is very little need of more than one man taking his entire time for it. The other men could continue their work on other lines and not serve until called upon.

There is another matter that Judge Knapp referred to this morning, and it is of extreme importance, I believe, and it is this: A commission or board of that character would have more standing and more weight with the two parties than a board appointed especially for the purpose. In other words, if it should happen that the other two members were one of them the presiding judge of the Court of Commerce with one the Secretary of Labor or Assistant Secretary of Labor they would carry into that work the prestige of their other positions, and that would be a very important item in their influence in affecting a settlement. I think, so fas as possible, the commission should not be a commission entirely of men appointed for that work. It should continue as long as possible to have men on it appointed for other purposes and carrying into the work the weight of their other positions.

There is a provision for an assistant commissioner. As I said, this work after awhile gets to be extremely technical work. If you have ever seen a contract between a railroad company and one of its organizations, you will realize how important it is. There may be 150 sections, regulating every detail of employment with the greatest minuteness. Often those rules are so put together that if you change one without knowing the whole situation you may simply throw out of gear half a dozen others. Not only that, but in discussing it, unless the man is very familiar with that work, he can not discuss with any intelligence the questions with the two sides. And as he sits with one side and then with the other, if he is not thoroughly familiar with it, not understanding the matter thoroughly, he thinks

they are both in agreement, and then when he comes to bring them together he finds they are not in agreement at all, that through ignorance of the details he has been mistaken entirely, and he is then in a worse situation than he was in the beginning. There they feel that he has been densely ignorant or they feel he has been a little disingenuous, and where either suspicion creeps in the work is naturally very much embarrassed.

The idea was that there should be an assistant commissioner, who should go into these cases with the commissioner often enough to know the men intimately that he had to meet year in and year out, so that whenever an experienced and well-trained man drops out his understudy is ready to go in and take his place. As it is now, I have felt compelled to withdraw from the work, and if Judge Knapp should withdraw to-morrow the result of seven years of experience—which is probably invaluable in the work—would be lost and there would not be anyone with experience to take it up. He would have to begin where we began seven years ago, and he could not begin there, since seven years ago we all began feeling our way along. Cases were simple, and if we made mistakes it was not so important. But now the most complicated cases are thrown into the hands of the mediator. It is assumed they have an expert knowledge of the situation, and if they have not got that the operation of the law is immeasurably interfered with.

It seems to me, therefore, that it is vital that there should not only be a deputy or assistant commissioner but there should be a salary sufficient to attract the right kind of man. You can not take a man who comes in at a low salary and stays years for that salary. You have to attract the man, and I want to say further that for the commissioner of mediation and conciliation, whose salary has been fixed at $7,500, I believe you require the same standard and same caliber of man that you require on the bench. I think the position has become of that importance. It was not so in the beginning, but it has become so, and I do not think that any salary can be fixed there that is too high if it will attract the right kind of man. You ought to pay a high enough salary to a deputy commissioner to attract a man who could at once step into the shoes of the commissioner, and on that account I believe the reduction of the salaries there would not bring into the work the character of work that is required to make it successful. I think the deputy should be appointed for the same term as the commissioner is appointed for.

The CHAIRMAN. Is that provided for?

Dr. NEILL. No, sir; it is not. It is on page 14.

Mr. LOW. I would suggest that on page 14, line 4, where the provision is made for the assistant commissioner, as follows: "There shall also be an assistant commissioner of mediation and conciliation, who shall be appointed by the President, by and with the advice and consent of the Senate, and whose salary shall be $5,000 per annum," there should be added, "who shall hold his office for a term of seven years," which is the term proposed for the commissioner. It has also been suggested, although this act does not propose it, that the other gentlemen who are added by the President to the Commission of Mediation and Conciliation to constitute the Board of Mediation and Conciliation, if they are called upon to render, as Judge Knapp and Commissioner Neill both have, additional duties in connection

with this work, that some provision should be made for their compensation when serving in that way.

The CHAIRMAN. What would you suggest as to that?

Mr. LOW. This act does not propose any because it was drawn by Judge Knapp and Mr. Neill themselves, and I think we all feel that the present law is defective in that sense.

The CHAIRMAN. Dr. Neill, what would you suggest as a compensation?

Dr. NEILL. I do not know what to suggest, Mr. Chairman, unless there is a provision that they should, while engaged on that work, receive some additional compensation—ten or fifteen dollars a day, something of that kind.

Judge KNAPP. $20 a day.

Dr. NEILL. The time required is not long.

Mr. LOW. Judge Knapp now suggests $20 a day.

Judge KNAPP. May I say a word on that point? My dear friend, Dr. Neill and I have rendered this service as well as we could without any compensation beyond the salaries we received in the respective positions we have held, this service being incident to what was supposed to be our principal duties. We have done it under very burdensome conditions, taking long railroad rides and holding negotiations, frequently at early hours in the morning, and then returning to the work, and it was very hard to catch up with the regular work which in the meantime had fallen into arrears, and I think it is only just that any official, whatever his position or salary, who is called upon to perform this additional duty, so very important, Mr. Chairman—there is nothing bigger in this country than this question we are talking about to-day—ought to have some modest compensation for what he does in addition to the salary of his principal office. As Dr. Neill has said, these additional officials, together with the commissioner, who constitute the board, would probably under ordinary conditions devote only a limited part of their time now and then, a day or two or possibly a week or a few weeks. To meet that a per diem, say $20 a day when they are engaged in this service would be no more than would be consistent with fair justice.

The CHAIRMAN. That suggestion is with reference to the Board of Mediation and Conciliation.

Judge KNAPP. To the two additional officials that the President will assign to constitute the board in connection with this commission.

Senator ROBINSON. This act contemplates the material lightening of the duties of those two members, and it seems to me that the argument in favor of compensating those two members is rather weakened by the fact that the principal duties are now to be performed by salaried officers, who are appointed under this act; and it might be that the necessity for compensation to the two members referred to having been diminished, it would lessen the popularity of the act while creating two salaried officers where none had existed heretofore, and, thus lightening the duties of those two officers who are to be named in conjunction with them, would put into this bill a provision that is not there now that would require some defense. There is nothing in this bill now that requires any defense. The attitude of this bill is peculiar. This bill can be passed through either House, in my judgment, with practically no difficulty; but if you create two salaried offi-

cers, one at $7,500 and one at $5,000, and at the same time provide for compensation where none has been paid and where the service has been so satisfactorily performed by public officers who have received no compensation and to whom none is to be paid, you write into the bill a provision which will lessen its popularity, to say the least of it; and I am of the opinion that that is a very minor consideration at this time. If you want to treat this as an emergency measure, you had better leave that out of it and pass the bill without putting that into it.

Judge KNAPP. As far as I am personally concerned, I perfectly agree with the Senator.

Senator ROBINSON. You can not have any interest in it, because your services are performed without compensation. There has never been a contemplation to pay you or Dr. Neill anything, and you had the brunt of the whole thing.

Judge KNAPP. I never sought or desired any additional compensation. No amount of money which Congress could reasonably provide would be any compensation.

Senator ROBINSON. I think I understand you perfectly, Judge Knapp.

Judge KNAPP. It has been a great gratification to me to know that I had, in a modest way, contributed to the peace between the railroads and the labor world.

Senator ROBINSON. I want to say one thing there, if you will pardon me, that the only fear that I have with regard to this bill is the fact that its provisions are taking out of this service necessarily the very two men—that personal element—which has made it so successful under the operation of the Erdman Act. The personal element of a mediator is always of overwhelming importance.

Dr. NEILL. This bill does not take them out at all.

Senator ROBINSON. Not of necessity; no. The President can still appoint anyone who remains in the service.

Dr. NEILL. That was put in intentionally, so that the President could have the widest latitude of choice. But there was this objection——

Senator ROBINSON. The President can not go out of the public officials to name those two, so that whoever else is designated from the service can go on this commission.

Dr. NEILL. No one designated could spare the time to go on it.

Senator ROBINSON. Unless he be compensated.

Dr. NEILL. No compensation would pay him for that amount of work, and he would not do it—anyone outside. The idea was this: For example, the bill originally provided that the chairman of the Interstate Commerce Commission should perform this function. When Judge Knapp left the Interstate Commerce Commission and went to the Court of Commerce, it seemed to me vital that Judge Knapp's experience and acquaintance and the confidence he inspired made it necessary that he should continue in this work, and it was at my earnest solicitation that President Taft suggested this change in the bill which enabled him to appoint any member of the Interstate Commerce Commission or any member of the Court of Commerce. Then he continued Judge Knapp.

Now, there is that objection to naming the officers in this bill. For example, suppose you said it should be the presiding judge of the

Court of Commerce and suppose you said the Assistant Secretary of Labor. The next presiding judge in the Court of Commerce might be a man of extreme legal ability but unfitted for this kind of work. Then you have to change that law.

I think the law should be left as elastic as possible in this respect. In the same way as regards the men to be named on the board with the commissioner of mediation and conciliation. I think the President should be allowed to make it one or two, as he chooses.

Senator ROBINSON. You think it ought not to be more than two?

Dr. NEILL. That makes three altogether. If you get more than three it is unwieldy. You might get two men who will work in harmony, but three men might embarrass the situation. In that case I think you had better leave the two alone. I think the law should be left as elastic as possible, because there should be as much elasticity of choice as possible.

Senator ROBINSON. I think that is undoubtedly true. You said awhile ago that most of your time during certain months had been directed to other duties than those connected with the Bureau of Labor. Do you mean that it was consumed in matters relating to mediation.

Dr. NEILL. Yes, sir.

Senator ROBINSON. You did not make the direct statement.

Dr. NEILL. For illustration, I left for Norfolk about the 15th of September, on a mediation case. Before I had finished that Norfolk case another call came and I had to go on to another case, and before that case was finished I had a third call, and a strike actually occurred before we could go there. From the 15th of September, until the following February 1, when my term expired, there were less than 30 days that I was free to devote to the Bureau of Labor.

I want to add one more thing out of regard to the next unfortunate Commissioner of Labor, Mr. Secretary. Nobody who has not sat through this sort of thing can tell you what it means. I have sat with Mr. Stone from 7 o'clock at night until 4 o'clock in the morning—and that is the time I have felt like murder. [Laughter.] There have been times when the situation had become acute and delay was accused of prejudicing the case. A wild telegram would come in that railroads were employing men. Immediately the situation became very much complicated and very much more acute, and we have been in continuous conference from 9 o'clock in the morning until 5 o'clock the following morning, and have eaten our lunches and our dinners across the table, still in conference.

Now, after you have been through that ordeal, lasting sometimes from three to four weeks, you come back in no condition to take up your work. So it is most unfair to impose those duties upon an official already charged with the responsibility of an important bureau.

The CHAIRMAN. Dr. Neill, regarding the appropriation on line 24, page 12, do you think that $25,000 is a sufficient appropriation for expenses?

Dr. NEILL. Oh, it is an abundance if there are no arbitrations. If there are arbitrations, there is no telling what the expense might be, but as Congress is usually in session [laughter]—I mean where the sessions are not very long we can tell toward the end of the session

whether there would be any requirement for any more, and that could be provided.

Judge KNAPP. On that point permit me to say this: It is obvious upon the face of the bill that it is necessary to make an aggregate appropriation of $25,000. Half of that is taken for salaries of the commissioner and his assistant. Now, to that must be added at least office rent, unless possibly there is some Government building in which this commission could establish itself; one or two clerks, stenographic clerks, supplies, and miscellaneous expenses, and you will see that you have not more than $8,000 or $9,000 left for the expenses.

The CHAIRMAN. What sum do you think ought to be provided?

Judge KNAPP. I would double it. As far as this point is concerned, of whether the President should be required to appoint two or, as the bill now reads, "not more than two," while I was disposed myself to favor the change and make the two obligatory, upon further reflection I am perfectly content to leave it as it is drafted, to the judgment of the President and the exigencies of the case, so that the board might be constituted of two at the outside, and not increased unless occasion should arise.

The CHAIRMAN. It can not be increased.

Judge KNAPP. You could add another, making three.

The CHAIRMAN. You will observe that it says "not more than two other officers."

Dr. NEILL. Judge Knapp's idea is that he could appoint not more than one——

The CHAIRMAN. Then, all he could do would be to appoint one other.

Dr. NEILL. And afterwards he could enlarge it to two, and make it three, if he saw fit, but at the beginning only two.

Judge KNAPP. In other words, your board would be constituted and established by the appointment of the commissioner of mediation and conciliation and by the designation by the President of one other official, and then leave it to his judgment as to whether he shall appoint a second one or leave it a board of two until circumstances might arise which would make it proper to add to them.

Senator ROBINSON. But in no case limiting him to the appointment of two in addition to the commissioner?

Judge KNAPP. Yes, sir. So I am content to leave the bill just as it is.

Senator POMERENE. Doctor, is it your understanding that under this bill an award could be made by a majority of the arbitrators?

Dr. NEILL. That was so intended, and I think the language so states.

Senator POMERENE. I have not seen that language in the bill. I have not read it over in its entirety.

Dr. NEILL. I might explain one peculiarity of this bill. My understanding is—and I am not a lawyer, and therefore I may be astray on this—but my understanding was, in the original bill, there were certain things that Congress did not have the power to do, so they put it in this way. They said, "If you care to use the machinery the Government offers you, you can use it only after you put into that agreement certain things." That was provided for. They must

agree to certain things before they could use this law and have the expenses met, and then the enforcement of the law becomes the enforcement of a contract obligation.

Senator POMERENE. And the idea is that they can provide that a majority of the arbitrators can make an award.

Dr. NEILL. Yes; that is one of the provisions.

Senator POMERENE. Yes; it is paragraph 6.

Dr. NEILL. That is made one of the stipulations. They must put that in the contract.

Senator POMERENE. There is another matter that I wanted to ask you about. You have discussed it at some length. You, of course, assume the possibility that this board may be a tie when it comes to the matter of making an award?

Dr. NEILL. Yes.

Senator POMERENE. What solution would you have for that situation?

Dr. NEILL. Simply the force of events. They could not stay a tie in this way, Mr. Senator. Any number can tie. That is, you could possibly not get a majority for any one proposition. Suppose you had 9. Very often in these cases they have 10 or 15 or even 20 questions involved. It is just as likely you would get 9 men who could not agree on any 2 of them, and if you have 6, I think this——

Senator POMERENE. According to the doctrine of chances you would be more likely to have a majority award with seven or an odd number than you would with an even number.

Dr. NEILL. I think this is the way it will work out. I am speaking now, you may say, from an intimate knowledge of the actual workings of these boards. It will follow, I think, that the employees will appoint two members who will be out-and-out partisans, the railroad managers will appoint two of their number who will likewise be out-and-out partisans, and the other two neutrals can force any settlement they want. If one pair say, "We can not agree with what you are offering," the neutrals will say, "All right, we will agree with the two men over there." Those two men have the control. You could not any more get one than you could two. The organization men will stand together and the representatives of the roads will stand together. If you had a board of seven there would still be a minority, because if those two men could get one of the others over they will get both over.

Mr. LOW. The United States and Great Britain adopted an even number of arbitrators in the Alaska boundary dispute, and also in the fisheries dispute, and yet an award was made in both cases, because the public necessity for the solution was so great.

Senator POMERENE. Doctor, while that is possible, you must also recognize the possibility that these men may evenly divide, and I think the common experience of mankind indicates that in courts where there is an even number of judges there is ordinarily a provision to the effect in the higher courts that the judgment of the lower courts may be affirmed or that the side on which the chief justice may cast his opinion will prevail. That differs in different States. All court jurisprudence recognizes the possibility that the judges may evenly divide. It does seem to me that while we are on this proposition—I do not know what should be done, but it does seem to me that there might be a provision here whereby this

should be resubmitted to another board of arbitrators, or possibly you have a commissioner of mediation here, and if the others can not agree he might be called in. I simply offer that as a suggestion. It does seem to me that the statute is lame when you leave the possibility here that they may evenly divide with no means of adjusting it under the law.

Mr. Low. Mr. Chairman, that has been considered, but we could get an agreement of everybody on six. We could not get it on seven. We could get it perhaps on nine, but I think both parties to the controversy feel that is too large a board to be really useful. The arbitration under this act must be voluntary, anyway. We can not make it compulsory if we want to, and I think nobody wants to. We have to trust to voluntary arbitration, and therefore it is much better, it seems to me, to pass the act in the form in which those who are expecting to use it are willing to use it, than perhaps to change it and make it unwelcome to one side or both.

The CHAIRMAN. That matter was fully considered and discussed by your committee?

Mr. Low. Yes.

Senator ROBINSON. If you will pardon this suggestion, it was disclosed this morning that the number six in this connection has this significance—the necessity for an increase in the number is clearly disclosed in some cases, and it was desired that the two parties to the usual controversy, the railroads, and their employees and the public, should have an equal representation, and that was the basis upon which the agreement was reached.

Senator POMERENE. I think that is a very good reason for providing for an increased number. There is not any doubt about it.

Dr. NEILL. Senator, I should like to make this one suggestion, that anyone who has not sat through these mediation cases can not have any conception of the extent to which public opinion influences the two sides. We have seen cases in which the railroads gave up something which they felt was their undoubted right. When it came to the final clash they said, "We do not dare to go before the public letting the matter break on that one point." The organizations have done the same thing. I have seen Mr. Stone here in one case accept a settlement that almost took his heart out by the roots, solely because it involved every mile of railroad territory in the West, in the month of December, and he was not willing to accept the responsibility before the public of precipitating a strike. It is on that feeling that I feel there is not the slightest chance that those boards will finally dare let a big issue of that kind come to a disagreement.

Senator POMERENE. That is open to this objection, in my judgment, that you are forcing one man against perhaps what may be his honest judgment as to the facts and the rights of the parties to the controversy. You are making him subject absolutely to public opinion, and speaking from my own experience where a court is composed of three members, and one judge is absent and counsel agree to try the case with two judges—it may be a long appeal case, and it takes a couple of weeks to try it—they differ in their judgment and it is declared a mistrial, and you have got to retry it, your entire work comes to naught. That is the thing I seek to avoid.

Senator SAULSBURY. Would there be any advantage in lodging the power somewhere to reduce the number six to three?

Dr. NEILL. They have that choice now. They can choose six or three.

Senator SAULSBURY. Suppose you have six men forming a deadlock, would there be any merit in reducing the six to three?

Dr. NEILL. Senator, I believe this, if you make any change in that number, six, or that method of constituting the committee, you will raise an unalterable opposition.

Senator SAULSBURY. I do not mean as the bill as drawn. I mean, as an arbitration occurs it is found there is a deadlock in the six, then would there be any merit in the suggestion in that case that the number might be reduced to three by the power lodged in the President?

Dr. NEILL. No; I do not think they would agree to that. When they reached that point they would be more determined than ever not to accept the change.

Senator ROBINSON. That would tend to make disagreement between the six?

Dr. NEILL. That is possible.

Mr. LOW. Mr. Daniel Willard, president of the Baltimore & Ohio Railroad is here, and Mr. Stone, of the Brotherhood of Locomotive Engineers, and also Mr. Post, representing the president of the Railway Business Association, which has taken great interest in having some amendments to this act. I would ask Mr. Willard to speak next, unless the Secretary of Labor will do so.

The Senator from Ohio asked this afternoon whether there had been any objection to the bill, and I stated, Mr. Secretary, that when we called upon you you had frankly said that your mind was not quite clear as to the provision of the bill which purports to make the commissioner and his assistant independent of the Department of Labor. I do not know what conclusion you have reached, except as I have heard that you are inclined to think that they should be assigned to your department. If it is agreeable to you and to the committee for us to know what your point of view is, I am sure we would be very glad.

STATEMENT OF HON. WILLIAM B. WILSON, SECRETARY OF LABOR.

Secretary WILSON. Mr. Chairman, I have gone through this bill not as a student should, but simply casually. The general purpose sought to be accomplished by the bill I am in entire accord with. I believe, however, that in seeking amendments to any existing legislation we should be careful when we come to dealing with those phases of existing legislation which have proven themselves to be practical and have operated successfully. I think there is scarcely a doubt that the mediators who have been appointed under the Erdman Act have been successful in administering the act, and they have been selected under the existing system, and yet this bill proposes to change that system and proposes to change it, as I understand it, upon the assumption that whoever undertakes the administration of the act will have prejudices to overcome if he is appointed by the Department of Labor.

I think that is true with regard to whoever may happen to be appointed, whether the appointment is made in accordance with the provisions of this proposed act by the President direct or made, as

under the existing law, by the President upon the suggestion of the Secretary of the department; the individual himself must build up a reputation with both sides of the controversies that arise before he can be effective in administering the law. That would be true no matter who was appointed or how he was appointed.

The organic act by which the Department of Labor was created provides that the Secretary of Labor shall act as a mediator in trade disputes and shall have power to appoint conciliators in trade disputes.

That is one of the most important functions of the new department, and if you establish a separate and distinct commission for the handling of trade disputes in the railway service upon the ground that prejudices must be overcome before the commission can handle the work successfully, the same argument would apply with regard to the Secretary of Labor acting as a mediator in trade disputes or appointing conciliators in trade disputes, and the great purpose for which the Department of Labor was created would be wiped out. The method of appointing mediators at the present time having worked successfully, it occurs to me that it is not advisable to change that method of appointing, except so far as circumstances make it obligatory to do so; and if the Commerce Court goes out of existence, then there would be the possibility that the President would be limited in his selection under existing law of one of the mediators under the Erdman Act, and it might be well to provide that the President should have the power to select either from the Interstate Commerce Commission, the Commerce Court, if it continues in existence, or from some presidential appointee in the Department of Commerce, but I do not believe that it would be advisable to change the mediator so far as his relations to the Bureau of Labor Statistics is concerned. As long as the conditions continue to exist where when disputes arise the employers in interstate commerce are in a position to make concessions to their employees, then there possibly would be no necessity of having the assistance of any department in working out the problem. But when the time comes, as it undoubtedly will come, judging by our past experience, when we have a prolonged period of industrial depression, and when concessions can not be made by the employers in the transportation business, then it would be necessary to have the assistance and support of a department that has been created for the purpose of promoting the welfare of labor. I now believe that it would be unwise to change that part of it except in so far as the member of the Board of Mediation named by the President was concerned, and that only because of the fact that changes may possibly take place in the personnel of those from whom the President may have to select.

The balance of the bill I have no objection to. On the contrary, I believe that it is absolutely necessary, and that it ought to pass in order to meet approaching emergencies. It has been shown in the recent past that the Erdman Act is not flexible enough so far as it applies to the appointment of boards of arbitration. A board of arbitration composed of but three members may be sufficiently large when you are dealing with a single railway or a single railway system, but when you come to deal with a set of systems, with a number of systems joined together, a board of arbitration composed of but three members may not be sufficiently large, and yet under the exist-

ing law there is no method by which you can proceed to the arbitration with a larger number of arbitrators and do it within the limits of the law. You may voluntarily enter into an agreement to proceed to arbitrate, but in doing so you take yourself out from under the provisions of the Erdman Act, and this provision is necessary to meet approaching conditions. Not that the problem of arbitration is the important problem in the administration of the Erdman Act, because it is not. The important problem in the administration of the Erdman Act is the mediation. It is by far better to get the parties at interest to mutually agree to the conditions and terms under which they are to work together than to submit the controversy, or any portion of the controversy, to arbitration. Because, when you submit it to arbitration and a third party steps in and decides, then there are some sore spots left that are injurious to both parties at interest.

The most important function under the Erdman Act is the function of mediation, the bringing together of the contending parties, the parties to the dispute, and enabling them or assisting them to adjust their own disputes in their own way. So that the arbitration feature of it is not the most important, and yet it is one of the features that it has been shown from experience needs amendment.

There are some other features here that experience has shown are necessary to the proper working of the Erdman Act, such as the giving of an interpretation of what the decision meant, the giving of an interpretation by the board of mediation as to what the agreement contemplated, and the giving of a decision by a board of arbitration as to what was meant by certain decisions made by them.

There is one feature in this bill that I think possibly might bear amendment, and that is where it is proposed that the board of arbitration, or a subcommittee of the board, may render an opinion giving an interpretation of what the award has been. I believe that it would be unwise to allow a subcommittee of a board of arbitration to put an interpretation upon a decision rendered by the entire board. It would lead to complications; it would lead to dissatisfactions that would not be well for the administration of the proposed act.

Taking it all in all, I believe that this bill ought to be put through as an amendment to the Erdman Act, not as a bill proposing to repeal the Erdman Act, but as an amendment to the Erdman Act embodying those features which experience has shown are necessary and essential for the proper working of the Erdman Act.

There are some minor features in it that might well be modified, particularly if both parties to prospective disputes can be brought to an agreement in connection with them. One of the points is the making of the board of arbitration six. As has been pointed out by the Senator from Ohio, Mr. Pomerene, there is a possibility of a deadlock by your board of arbitration upon decisions where the board of arbitration is six, and if that could be made seven or nine by mutual agreement, there would not be the same possibility of that deadlock.

If you have a deadlock with the six individuals who are members of the board of arbitration, there is not the same likelihood of public opinion affecting them that there is of public opinion affecting the original parties to the dispute. You take the workmen or the employers in the transportation industry, and they are more likely to be susceptible to the pressure of public opinion than would be the

members of a quasi judicial board, who are supposed to pass upon the evidence as it has been presented to them. And I am of the opinion that that board, the larger board, should be an odd number, the same as the smaller board, provided, of course, that both parties to transportation disputes can be brought to an agreement upon that point. If you propose to put this bill through as it is, the $25,000 provided as an appropriation will not be anywhere near adequate for the work before you.

If I recall the bill as I read it, it gives to the board of arbitration authority to summon witnesses, administer oaths, and so on. When it does that you have a dispute involving all of these technicalities that have been brought to your attention, and the subpœnaing of witnesses will create an expense for that commission, and you will not be able to meet it with either an appropriation of $25,000 or an appropriation of $50,000. I have not made any estimates as to what it would cost, but in my judgment it would cost more than that amount if you had very extensive arbitrations under this law. And as it is now, when it comes to a question where neither side agrees, where they are unable to bring them together for the adjustment of their trade disputes and where they absolutely refuse to arbitrate, there is power in the Bureau of Labor Statistics to proceed with an investigation of the subject matter, for the purpose of determining just where the rights and the wrongs of the controversy are.

If you make the separate commission, unless you provide that in the bill, there is no such power. It seems to me that in order to make this commission effective, to put these mediators in a position where they can do effective work, there should be behind those commissioners the power to make an investigation in the event of a failure to mutually come together, or to submit to arbitration, and that is one of the reasons why, in my judgment, there should not be a separate commission created as provided by this bill.

As I said to begin with, I have not made an exhaustive study of the bill and I should prefer to file with the committee a brief expressing my views, as I think possibly I could present them in a more connected way in doing so than in this offhand way.

The CHAIRMAN. When do you think you could present the brief?

Secretary WILSON. Within a day or two.

The CHAIRMAN. It seems to be such an important matter that we should act upon this bill promptly.

Secretary WILSON. I think so.

The CHAIRMAN. I wish to say in this connection that the conditions of the relations between the railroads and their employers are such—at all events are represented to be such to the committee—as to require some important legislation, and the advantage that this bill presents to us is that it is the agreement after full discussion of both employers and employees; and I understand that they have fully discussed the question which you present as to whether it shall be an independent commission or whether it should be attached in some way to the Department of Labor, and they seem to have come to a conclusion regarding that. May we not, if we conclude to accept the amendment which you suggest, put this bill into a condition that neither party will accept it, and, as I understand it, the objection now is that one of the parties will not operate any further under the Erdman Act.

Secretary WILSON. If you will permit me, Mr. Chairman, the only argument that I have heard presented as a reason why the commission should be changed, or the method of appointing the commission should be changed, is the argument I have stated. The other provisions have been objectionable, sometimes to one side and sometimes to another, but so far as the administrators of the Erdman Act itself are concerned they have not heretofore been objectionable, and even since the Bureau of Labor Statistics has been transferred to the new department there have been cases handled under the Erdman Act. The trainmen's dispute which was handled at Chicago, and which Dr. Neill was appointed to the adjustment of, occurred since the new department was created, and under the organic act—not under the Erdman Act, but under the organic act of the department authorizing the appointment of conciliators and authorizing the Secretary to act as a mediator. We have had up with some of the eastern railroads—the very big eastern roads—disputes that arose between them and their clerks which did not come under the Erdman Act and which were handled by the department itself, showing that so far as the management of the railroads is concerned that there was no feeling of prejudice against the department as such. The Acting Commissioner of Labor Statistics, Mr. Hanger, handled the case of the railway clerks that I have reference to, and handled it apparently without prejudice, and acted upon the request of the manager of the railway system and the representatives of the employees, so that I think that fear is an ungrounded fear. But the difficulty, the great difficulty, has grown principally out of the fact that there was no flexibility in the appointment of arbitrators. That has been the one great difficulty, so far as I have been able to learn it, in the administration of the Erdman Act.

Senator POMERENE. Mr. Secretary, while you are on your feet, the arbitrators provided for in this bill, where it says to consist of six, shall be two to be appointed by each party to the controversy and two to be selected by the four thus chosen. Do you know of any reason which has been urged, either on behalf of the employers or the employees, why that number thus selected by the four arbitrators orginally chosen should be two rather than three? I can not conceive myself what objection there can be to selecting three of the same character and kind as the two which this provides for, and that would avoid the difficulty.

Secretary WILSON. The only reason would be this, so far as I have been able to learn the situation, that if you permit those four to select three others you are giving to the general public, or those who are supposed to be the general public, a representation of three upon that commission, while the other two interests have each but a representation of two. That, however, would be overcome by the selection of a commission of three from each—three employers, three employees, and three from the general public—making a commission of nine. Then you get a commission in which all three are represented and, at the same time, an odd number.

Mr. LOW. May I ask that Mr. Willard, the president of the Baltimore & Ohio Railroad, be now heard?

The CHAIRMAN. Yes.

STATEMENT OF MR. DANIEL WILLARD, PRESIDENT BALTIMORE & OHIO RAILROAD.

Mr. WILLARD. Mr. Chairman and Senators, the whole matter has been covered so fully and frankly by Mr. Low, Judge Knapp, Dr. Neill, and others who have spoken, and my views are so fully in accord with what they have said, that I will not take your time to go over the full matter.

I should like to indorse what Dr. Neill says with reference to the desirability of keeping the arbitration in such a way as to be as far as possible removed from any political influence. I think that is of the utmost importance.

Further, it has been pointed out that in any event it must be voluntary with both parties if it is to be effective, and it seems to me that it would be well if the Congress can see its way clear to pass a bill that has been unanimously recommended to it by the two principal parties. While it is true it is still voluntary, nevertheless the parties recommending it are under the strictest possible moral obligations to comply with its provisions after it does become a law. They will certainly to that extent be much more strongly bound morally than they are under the present law, even though in all other respects the present law might be satisfactory.

With reference to the number, six, my views are quite in accord with those expressed by Senator Pomerene. I was in favor of an odd number, and I was personally in favor of a committee constituted, two selected by the employers, two by the employees, and they to select three, in order that we might avoid the deadlock that has been suggested.

In some other minor details my views differ from the bill as it is now drawn, but that matter was all discussed very fully and at length by a conference called by Mr. Low, and it was found that we could not get a unanimous conclusion on any other lines than those that were finally suggested, and feeling that it was necessary, if we were to get prompt action, we should come here and give our unanimous support to some bill, we all felt that it would be better to waive our minor objections and accept this particular bill upon which we could agree. While I personally would prefer a committee constituted of an odd number, preferably seven, I am not at all concerned about the possibilities of a deadlock. I think, as Dr. Neill has pointed out, that when these questions which will come before that commission, which will be questions of very great magnitude, do come up the arbitrators will reach a conclusion, even though the number is only six.

I think that is all I care to say.

Senator POMERENE. Do you see any objection to the suggestion made by the Secretary that there should be three to be appointed by the employers and three to be appointed by the employees and they to select another three?

Mr. WILLARD. Except the objection that has already been urged, that it is a very large commission. It would afford an odd number, of course.

Senator POMERENE. I want to ask Mr. Willard just one question further. Do you know of any railroads that would object to submitting their matters to arbitration under the provisions of this bill?

Mr. WILLARD. No, sir; and, so far as I know—and I know definitely concerning a very considerable number—they would all be in favor of this bill: and I might say one thing more, they all recognize this, that if the Pennsylvania Railroad, for instance, in the eastern territory, should submit its difficulties, independent of the others, to arbitration under this bill, that would virtually settle the question for all the others, so it becomes an assured fact that if one large company accepts it the others must.

Mr. LOW. I should like Mr. Warren S. Stone, grand chief International Brotherhood of Locomotive Engineers, to be heard next.

STATEMENT OF MR. WARREN S. STONE, GRAND CHIEF OF THE INTERNATIONAL BROTHERHOOD OF LOCOMOTIVE ENGINEERS.

Mr. STONE. Mr. Chairman and Senators, there is little to be said on the general features of the bill. With the exception, perhaps, of Mr. Garrettson, I have been Erdmanized perhaps more than any other one man on the American Continent. I have mediated, I have arbitrated, and I have fought outside of the bill, and I made the fatal error of going outside of the Erdman Act, at the solicitation of my friend on the left, to settle a very serious case in the East a year ago, and I have only been sorry once, and that has been ever since.

I am unalterably opposed to odd numbers, and I am perhaps one of the strongest fighters against that in the ranks of the brotherhood, because you know "a burned child dreads the fire."

I have just had an experience where one side held the balance of the power, and that was the so-called public side, although the men I represent are a part of the public.

In a recent arbitration for this eastern territory, which is the same territory which is now being covered by the trainmen and the conductors and which brings up the emergency feature of this bill, it might be well to tell you who have not studied how vital it is that east of Chicago there are 53 railroads representing about 50,000 miles of track and over 40 per cent of the total freight tonnage and the passenger traffic of the United States. In that territory there are over 38,000,000 people served by these railroads, and you can readily understand what a cessation of traffic means.

We had a committee of seven, Mr. Willard acting for the railroad, and Mr. Morrissey for the trainmen—and I am not here to criticize the board, because I am a good loser. I lost, and I am not going to "welsh" about it after I did lose, but there were certain features developed during that arbitration that have impressed themselves so strongly upon me and the representatives of the other labor organizations that never again will we put ourselves in that position. We had a committee of five selected from the public, and we had in addition Judge Knapp and Commissioner Neill, and we had associated with them in the selection Chief Justice White, of the Supreme Court. They selected five men of international reputation, very learned men in their professions, but who knew absolutely nothing about the A B C of railroading or the fundamental principles underlying a wage scale. They would not have known a box car from a freight car, or a passenger engine from a freight engine, if they had met them coming down the street. They started in to make a wage scale for 32,000 men, with the local conditions underlying the 54 railroads, and the

result was that they stayed together as a unit, and if reports are correct these five men representing the public, for fear they might become contaminated with the other members of the board, held meetings of their own, which, if true, was an offense absolutely inexcusable, in my opinion. The result was when the full board did meet the steam roller worked overtime and they had their own way. We got what they called an award. Nobody knows yet what that award really means.

On the 29th day of April, 1912, we signed a contract to arbitrate. It was to be binding for one year from that date—May 1. It expired on May 1 of this year. On the 28th day of November they handed down the first draft of their award. On the 16th day of February they handed down a subdraft of the report, or rather an additional explanatory draft of what the original draft really did mean. And now we are back to them again trying to find out what the last award they handed down really means. And now that the time limit has expired—on May 1 of this year—only 19 roads of the 54 have put it into operation, and we are still trying to get the rest, and we hope at least that our grandchildren will get the benefit of the award.

Under those conditions, you can readily understand why I do not take any stock in an odd arbitration board. I think the question of two, two, and two, to which I am strongly wedded, is the right one, because never again will I arbitrate a case where any one party to the arbitration holds the balance of power. I think the possibility of a deadlock so remote that it is not at all likely to occur. It is not half as likely to occur as it is if you make the board seven, or an odd number, and one of these organizations refuses to accept it, which is liable to occur at almost any time, because, speaking for the 73,000 men I represent, the Brotherhood of Locomotive Engineers, never again will we accept an arbitration where any one party to the arbitration dispute holds the balance of power, and I believe with our past experience we are perfectly justified.

Senator POMERENE. Mr. Stone, if it will not interrupt you——

Mr. STONE. Not at all.

Senator POMERENE. What objection is there to Secretary Wilson's suggestion that there be three appointed by the public and three each by the employers and employees?

Mr. STONE. No particular objection, any more than it would make it unwieldy and a great deal more expensive. And oftentimes, in many cases, it looks to me like taking out a 12-inch siege gun to shoot sparrows. For instance, on a road of 40, 50, or 60 men, what would you want with a big commission of 9 men?

Mr. WILLARD. It is optional.

Mr. STONE. I understand it is optional. I believe the first request in the eastern territory was for a committee of 11 men—or 17 men was the first number. Then they got it down to 11, and finally we got it down to 7. But I would have much rather left it to Judge Knapp and Dr. Neill alone than to have it go the way it did.

What I say to this committee is in no spirit of disrespect. I have accepted arbitration and have tried to put it into effect. They were very learned gentlemen in their particular class. One man has an international reputation as a geologist. He wrote a part of some 80 or 90 pages of this report, on political economy and sociology, and

arbitrated a number of questions that no one dreamed would ever be arbitrated. That was the unfortunate feature of it.

But, coming back to this question here, I want to impress upon you men the importance of this emergency. Here is a situation that is not an idle dream. It is right here confronting you to-morrow. And if something is not done, you are liable to have this whole eastern country tied up. This is the only plan that after weeks of discussion we can get together on, and we believe it is one that is absolutely fair. You can just let your mind run riot and you can not imagine how bad it will be if the railroads east of Chicago stop traffic for even 24 hours, and yet it is something that is liable to happen.

Regarding the question of investigation, with all due regard to our Secretary—and I have a very high personal regard for him—I want to say to you the very minute the Secretary of Labor starts to investigate one of these wage questions between the railroads and their employees, and then passes judgment and delivers his opinion upon it, right then and there it has lost its usefulness, because never again will either side look at it except with suspicion, in my opinion. I do not believe that either side has understood at any time that Dr. Neill and Judge Knapp, when they were acting as mediators in the number of cases that they have handled throughout the country, with which I am familiar—I do not believe we dreamed for a moment they were under any bureau or any department at all. I am sure if we had thought they were, we would have studied a long while whether we should have accepted their mediation or not. I believe it would be a mistake, because I know the class of man it takes and the peculiar qualities necessary. Why, a man to be a mediator has got to have a backbone in him a yard wide, and he has got to have red blood in him. And while they are both friends of mine, I do not know of a man on earth to whose funeral I have felt sometimes I would rather send flowers than to them. I know the other side feels the same way. And it takes a lot of courage and backbone to hold both sides up to the line and bring a settlement with two contending forces, because there is a strong sentiment on both sides, and I know how strong this feeling gets at times. Therefore I think it is a grave mistake, with all due regard to the Secretary's opinion, to undertake to put it under his department or any other bureau. I believe it should stand absolutely alone.

We generally wait, you know, until people are dead before we say anything nice about them. If we could always be assured that Judge Knapp and Dr. Neill would be the two men who would mediate and pass on these cases, I would not care whom you put it under. But, unfortunately, you do not get men like that only about once in a lifetime, and we do not know who is coming after them to succeed them; but they should be absolutely free, because I know the threat has been made time and time again that they would go behind these men. There was not any place to go, but I am satisfied, if it was under the Secretary of Labor to-morrow, that an attempt would be made by one side or the other to bring political pressure to bear on the Secretary in the first big case that came up. I am just as sure it will come as that I know that the sun will come up to-morrow morning, because I know human nature just enough to know it would try to pull every possible string, and capital and labor would try to influence him on their side. Just as long as it is under the control of

any political appointee you are going to have that danger. I think it would be a fatal mistake.

The man who acts as the mediator between these great bodies has got to be a man of peculiar fitness for the place. You can not take a stenographer out of an office or some man and make a mediator out of him in a few days. He will have to build himself up. And while what the Secretary said is true—that, regardless of the fact that the Government is back of this man, he will have to establish a reputation for himself for fairness—yet it is true that this man must not start out and be handicapped for two or three years by either side looking at him with suspicion. We do not want any man to come down and mediate our wage scale for us who comes from the ranks of labor, and I can not believe that the employers want a man to come from the ranks of labor to act as mediator for them. I think he should be from the outside entirely.

Mr. WEBB. Why would political pressure be brought to bear, then, on the Secretary in appointing these arbitrators?

Mr. STONE. Why would it be? It would not be brought to bear upon the Secretary in appointing. It would probably be brought to bear if the arbitrator or mediator did not get the results they thought they ought to have, in that they would try to get behind him. I do not believe any man will ever successfully build a place for himself if he has got to be a part of a bureau with some man above him telling him what he has got to do. I do not believe you can get the character of man with the necessary stamina in him to do the work who will accept that opinion.

Mr. WEBB. Are you afraid that influence would reach the President?

Mr. STONE. No; it is not as likely to come there, and yet it should be as far removed from all political influence as possible. In my opinion it should be a bureau by itself, and there is not any danger about him not having work enough. He will be busy the biggest part of the year because we have 345 railroads stretching out here all over this great continent. It is going to mean a lot.

Regarding the cost, I question if the cost will run up to the amount stated, for this reason: This committee of arbitration and mediation under the Erdman Act has always had the power to subpœna witnesses, and yet I do not know of them subpœnaing a single witness in any of the cases I have ever handled. Each side has presented their strong witnesses for their particular side of the case. I do not know of them subpœnaing a single man.

Regarding the statistics that the Secretary speaks of, I want to say to you frankly, with all due respect to the different departments of the Government, that I would not accept as authentic either the statistics from the Commissioner of Labor or the statistics which have been proven incorrect from the Interstate Commerce Commission bearing on the wage scales of the railroad employees of the United States. In our last arbitration in the eastern territory we proved that the statistics from the Interstate Commerce Commission relative to the average wage of the engineers was absolutely incorrect, and we can prove it again at any stage of the game, and for that reason I would not accept them in any arbitration case.

Gentlemen, speaking for these engineers, I want to impress upon you the importance of this being an emergency measure. I know

what it means. I have been at the head of this organization for years, and I know what it means in one of these great wage movements, and I know how tight everything is strung up just to the breaking point, and how easy it is to get on just over the breaking point and have things go to smash.

You might ask why we have these concerted movements. Why is it necessary? At the start of the Erdman Act we handled the individual railroad with the individual manager. That day has gone by. I wish I had one of the exhibits here to show you that we used in our eastern arbitration case, where 15 directors held 63 positions on the 52 roads.

It is the intercorporate relation, the interlocking of these great systems, that practically puts the control of all these great railroads in the hands of a few men. And for that reason it is simply a waste of time to make a move against an individual railroad. You have got to move all of the roads in a competing territory in one move together. That is why we have these concerted movements, and it has been found necessary to do that in order to get results, and it is probable they will be handled in that way in the coming years.

But this thing that confronts us to-day is not imaginary. It is real. It is right here. The Fourth of July is only a little ways off, and that problem will be confronting the railroads east of Chicago, and things will be strung up to the point where it is the easiest thing in the world to have them break up. There is not any question about the power of these organizations, and there is not any question that they believe in the justice and equity of their position, and if this plan which we propose here is something which both parties can get together on, and have industrial peace, then it seems to me in all fairness for the great class of men we are all trying to represent, and you men who are looking after the interests of these 38,000,000 men who are served by the railroads in this eastern territory, that this bill should be passed.

I shall be very glad to answer questions anyone has to ask.

The CHAIRMAN. You would urge, then, that this bill be passed without amendment?

Mr. STONE. I certainly would, yes. sir; because I am afraid if you commence to amend it you will destroy the very thing we are trying to bring about, and that is industrial peace, because I know that there are certain amendments that are recommended by a few that the labor organizations would not accept.

The CHAIRMAN. There is certainly no danger to the public in this bill at all that you can suggest?

Mr. STONE. I can not see any, but I can see a whole lot of safeguards for industrial peace.

The CHAIRMAN. Outside of the public the only two parties interested are the railroads on one side and their employees on the other?

Mr. STONE. Yes.

The CHAIRMAN. And they would both agree?

Mr. STONE. Yes.

The CHAIRMAN. And these gentlemen in whom you have such confidence—Judge Knapp and Dr. Neill and the representatives of the Civic Federation are of the same view?

Mr. STONE. Yes, sir.

The CHAIRMAN. They want this bill passed without amendment?

Mr. STONE. Yes, sir; the bill as it lays before you is not only the result of our judgment but the result of years of bitter experience.

The CHAIRMAN. How long have you been engaged in framing this bill?

Mr. STONE. We have been discussing the bill off and on for three years. It finally crystalized——

The CHAIRMAN. You have had numerous discussions?

Mr. STONE. Yes, sir; I suppose discussions without number.

The CHAIRMAN. And you regard it as your best expression?

Mr. STONE. I believe it is the best thought of the combined interests that are represented here in that bill.

Senator THOMPSON. How long have you been working on it this last time?

Mr. STONE. I think we have been working on it perhaps four or five months. That is, since we have taken——

Senator THOMPSON. You had an organization meeting here, did you not, in the last few months or weeks?

Mr. STONE. Yes; we have had several meetings here and in New York.

Judge KNAPP. When was the meeting in New York?

Mr. STONE. The meeting in New York was held in March, but it has been up by correspondence, I think, commencing along about last September.

Senator THOMPSON. Was this one of the principal subjects discussed at that meeting?

Mr. STONE. Yes; it is the amendment, and it was more closely brought out by the firemen, because we realized when Dr. Neill and Judge Knapp used their power and had the railroad come across and accept the arbitration under the Erdman Act that it was the last time it would ever happen. We realized that we had come to the parting of the ways and that something had to be done.

Senator THOMPSON. That objection you would not urge against a committee of nine?

Mr. STONE. No; I would not particularly object to nine, although I think it is unwieldy. It is too large. But I am sure we all agree—for example, in our eastern wage scale we had about $11,000,000 at stake, and it is too much power to put in the hands of any one man. I do not want to stake the future welfare and the working conditions of 32,000 engineers on the particular ideas of one man.

Senator THOMPSON. That is, that one man might control the final decision?

Mr. STONE. Yes. I think it is too great.

Senator BRANDEGEE. I was going to ask you what is your explanation of the fact that the Interstate Commerce Commission failed to state correctly the average wages of the engineers?

Mr. STONE. I think their system of arriving at the average daily wage is entirely wrong.

Senator BRANDEGEE. I mean, take the engineers; it would seem to me to be a simple problem, without being familiar with it at all. What is the difficulty about ascertaining the average daily wage of the engineers, if you know the wages paid on each road?

Mr. STONE. In the first place, all the reports the Interstate Commerce Commission have are made by the railroads themselves. That is the first thing. The next thing is, an average of a number of

things is misleading. For example, I might have four meals to-day, you have three, another man three, and another man two, and the average of all is three, but you would have a hard time making the last man believe he had three meals. On a particular road when you take the averages of the parties you have a result that nobody believes. It does not mean anything. Figures, you know, can be juggled. I have juggled a few myself, and it is possible to take figures that you can not question and prove by them that yesterday is the day after to-morrow.

Senator BRANDEGEE. I can understand that possibly the average would not represent in many instances what the particular persons received, of course, but I understood you to say that their figures were wrong, and that you would not accept them at all.

Mr. STONE. No, sir; and the firemen in their late arbitration refused absolutely to accept them, and we have torn them to pieces by our statistician and proved them to be incorrect, and I think it is an open secret at the present time that the Interstate Commerce Commission is considering the adoption of a new plan of keeping records entirely, so as to arrive at a more correct figure.

Senator BRANDEGEE. Since you have called their attention to this, does the commission admit that their figures are erroneous?

Mr. STONE. They admit they are made up from the best information they have.

Senator BRANDEGEE. Do the railroads misstate the wages they pay?

Mr. STONE. No; I do not think they intentionally misstate. I would not mean to say that.

Senator BRANDEGEE. If this should become a law, it would not be compulsory arbitration, would it?

Mr. STONE. No, sir.

Senator BRANDEGEE. They can arbitrate if they want to now, can they not?

Mr. STONE. Yes, sir.

Senator BRANDEGEE. It was stated this morning by one of the gentlemen—Mr. Arthur, I think—that the railroad had absolutely declined to arbitrate this question, anticipating difficulties.

Mr. STONE. Yes, sir.

Senator BRANDEGEE. The act provides in section 3 that when a controversy arises which can not be settled through mediation the controversy may be submitted to the arbitration of the board of six.

Even if this bill which you urge to meet this pending emergency were passed, the railroads might still refuse to arbitrate, might they not?

Mr. STONE. They might, but I do not think they would, because you heard Mr. Atterbury, I think, speaking for the Pennsylvania Railroad, say they would accept it, and Mr. Willard, speaking for the Baltimore & Ohio, practically says the same thing; and also Mr. Brown, of the New York Central lines, indorses this. So, with him, speaking for the 17 lines he controls, they would practically dominate the eastern country.

Senator BRANDEGEE. What surprises me is that they are willing to arbitrate if we pass this bill, and yet they refuse to arbitrate now, and I do not see why.

Mr. STONE. This is why: Under the present arbitration you have only three. Each side selects a partisan.

Senator BRANDEGEE. I am not talking about the Erdman Act. I mean to say it seems to me, offhand, without any knowledge of what has led up to this controversy, that if the two parties had a sincere desire to compose their differences, it is perfectly within their power now to appoint, say, six or nine men and provide for their appointment in such manner as they might agree upon. If the spirit of arbitration were present, it seems to me they could arbitrate now.

Mr. STONE. That is perhaps true. I did. I went outside of the law and arbitrated, and I paid up not only in the expenses of the arbitration but I paid dearly for the award we got, and I say to you frankly that we are not going out of the law to arbitrate again, regardless of what the need may be.

Senator BRANDEGEE. What has been the difficulty?

Mr. STONE. The difficulty is that after the award is handed down you can not get it put into effect.

Senator BRANDEGEE. I am in favor of this bill personally, so far as I know at the present time, but I was at a loss to explain to myself why both parties could get together in such a friendly spirit after this was passed, which simply leaves it optional with them to do, provided they were willing to do it if they wanted to, while they are unwilling now.

Mr. STONE. There is this difference. When you are arbitrating under the law you have a moral effect that you do not get in any other way.

Senator BRANDEGEE. I can see that if the award was enforceable as a judgment of a court, by execution or by an injunction, that this would be a more binding and efficacious remedy than the other, but I myself can not understand why you could not do everything now if you wanted to that you could do if we passed this optional bill.

Mr. STONE. We could, perhaps, but unfortunately the millennium is not here. When we arrive at that day, when we will all do right and be right, we will not need any boards.

Senator BRANDEGEE. That is a sort of Christian Science treatment?

Mr. STONE. It is a kind of an absent treatment at some times. [Laughter.]

Senator THOMPSON. Let me ask you another question about the number of this board. I am not quite satisfied. I feel like Senator Pomerene. The even number six does not seem right to me as a lawyer. To obviate the objection you have raised, why would it not do to have a board of nine and permit a verdict of seven to control the decision? That would not place the responsibility upon one man.

Mr. STONE. I do not see any particular objection to a board of nine, although I think it is too bulky. I think we are borrowing a whole lot of trouble in bridging a stream that we will never come to. I want to say to you when a board of six appointed under a law of the United States, two and two and two, fail utterly to get together, the parties at interest have got to have a pretty strong position that will let them take the bit in their teeth and go away and strike.

Senator THOMPSON. Then would not one side or the other lose greater rights than if a decision could be reached in some other way? One side would surrender more than they would if it could be decided by a smaller number?

Mr. STONE. Probably both sides would surrender something in the spirit of trying to get together. Just think of leaving the whole

thing to one man, or to one influence, like in our own arbitration in the East, when we had a class of men who were so class conscious that they practically ran the steam roller over different questions that both Mr. Willard, who represented the railroads, and Mr. Morissey, who represented the engineers, agreed were right. Yet the steam roller worked merrily on.

Senator THOMPSON. I am thinking of the interests of both parties to the contention. I know from my little experience in the court and on the bench that a decision—a unanimous decision—of 12 men is more times erroneous than a decision of 7 out of the 12, and a greater injustice is sometimes done by requiring a unanimous verdict.

Mr. STONE. So far as that is concerned, I would rather leave it to the presiding judge at any time than I would to the jury at any stage of the game.

Senator THOMPSON. You are trying to frame a plan here so that an agreement can be reached to the advantage of all?

Mr. STONE. I believe we have got it.

Senator ROBINSON. The chief virtue in six is that they have all agreed upon it and all want it?

Mr. STONE. Yes; and we would not have seven as a gift.

Mr. LOW. I will next present Mr. Post, who is the president of the Railway Business Association. He has been much interested, and his organization behind him, in having the Erdman law amended so that it would meet the views of both sides, and we of the National Civic Federation happened to hear that and asked Mr. Post if he would come here and present the views of his organization.

STATEMENT OF MR. GEORGE A. POST, PRESIDENT RAILWAY BUSINESS ASSOCIATION.

Mr. POST. Mr. Chairman and Senators, the Railway Business Association is an organization of manufacturers of all of the different kinds of material and equipment entering into the building and maintenance of the railroads of the country, an organization giving employment to a million and a half workingmen in this country, giving sustenance to 6,000,000 or 7,000,000 of its population, paying $250,000 yearly of the freights earned by the railroads, and using some 225,000 cars of their total equipment in the transportation of our commodities.

I would say in the beginning that this has been a most interesting and illuminating afternoon for me, having at one time had the honor of sitting as you gentlemen now do as a Member of the Congress of the United States, acting as a member of different committees before whom have come many people contesting for certain desires uppermost in their minds, pulling and hauling each other, each trying to get the advantage of the other. But this afternoon I have witnessed a most glorious sight, a joint committee of the Senate and the House listening to all parties who are interested in controversies upon the wage question, one of the most vital questions affecting humanity, pleading with this committee that you shall accept from them the draft of a bill to be passed at the earliest possible moment by Congress, to which they have given much earnest thought, as they have come to realize the dangers that confront the country if there shall not be an agreement and harmonizing of these great conflicting in-

terests, and who have given and taken in these conferences, these men who are accustomed to the exercise of power, the controlling of large bodies of men, and yet they have met each other face to face, and have had the patriotism and the administrative judgment to concede some points which they thought they would prefer to have in this bill, showing deference to the protests of others, weighing whether it should be 9 or 6 or 3 or 11 men that should sit on a board, and they have found that 6 would satisfy them all.

The organization which I have the honor to represent has not participated in any of their conferences, although invited to do so by Mayor Low. Our position is that of an important part of the public which uses these railways. We have factories all over the country, we must have transportation facilities, and in appearing before you I feel that I, in a feeble way, may call myself a representative of the public, which constitutes the third party to the controversies which these people are trying so earnestly to compose.

Therefore, gentlemen, it is not necessary for me to review to you the arguments that have been so ably presented by them of why they have done certain things, but to come to you as a representative of the business men and say that what these men want I believe the public of the United States is yearning for, and that is immediate action, the passage under any kind of emergency parliamentary practice that can be designed to meet this particular case, so that when this vote that is now being taken shall be filed with the officers of these organizations, and again the employers and the employees shall face each other, there shall be a method of arbitration provided which public opinion will insist shall be availed of.

It has been asked by one of the honorable members of the committee, Will they do it? I am confident that such is the state of public sentiment to-day that any of these organizations making their demands, or any organization refusing demands and finally getting to this crucial situation where something must be done by mediation and arbitration, that either side offering to go—the wording of the statute is "may"—but if either side shall say, Let us avail ourselves of this bill as it has been passed by Congress, there is not any railroad organization, there is not any labor organization that will face the obloquy that would be heaped upon them by the public by refusing to accept the provisions of this act.

The Railway Business Association, when this matter first began to be bruited, took a very active and earnest interest in it. We knew what it meant to us as well as the rest of the business public, and we issued a bulletin upon this subject entitled "The National Menace of Railway Strikes." Our secretary, Mr. Noxon, has copies of what we call Bulletin No. 12, which I shall ask him to leave with the committee, so that they may see what was the position assumed by our organization, in which we discussed what we thought ought to be done. We ourselves proposed certain provisions which should be enumerated in this bill. Some of them have been included and others have been left out. But whatever the judgment of these people, we are not here to say to you that we want any of our suggestions incorporated now, because we bow to the consensus of opinion of these men who have given it such continuous thought. When our bulletin went abroad, scattered throughout the country, going in all the newspaper offices in the cities of this country, we have had

our reader, who goes over the columns of those papers, clip out the references, editorial utterances, expressing the opinion of individuals, or anything of that kind, and we will also lay before you clippings that have been taken from those papers, which will convey to your minds what has been said upon this question and upon the desirability and the necessity of such a bill as this, and that it is important that it should be done at the earliest possible moment.

I will say, also, that my reader tells me that in all the papers he has read that have come from all quarters of our country, that, while in many of them have been urgent editorial expressions urging this, there has not been one paper in the United States, so far as we have found, which has opposed the passage of a bill such as this which is now before you.

One other matter, gentlemen, and I am through. That is, as a business man, some attention has been paid to the cost that might be involved in the passage of this bill. I feel that I represent in your presence men who represent investments running high into the hundreds of millions of dollars, who are heavy taxpayers in all of the States of the Union, who contribute to the revenues of our Government stupendous amounts of money, and I can give you assurance, gentlemen, that the business public of the United States will point no finger of criticism upon any amount of money that is necessary to install this board of mediation and to pay the expenses of arbitration, no matter what figure it may be, because it will be the best possible investment that can be made by this Government for the establishment of industrial peace instead of being constantly upon the verge of industrial war, with all of its disastrous consequences to us all.

I thank you.

(The bulletin and newspaper clippings referred to above are as follows:)

[Railway Business Association Bulletin No. 12.]

THE NATIONAL MENACE OF RAILWAY STRIKES—IMMEDIATE LEGISLATION IMPERATIVE—FEDERAL ARBITRATION LAW NO LONGER ADEQUATE—MORE WAGE CONTROVERSIES THREATEN DISASTROUS TIE-UP—EXTRA SESSION THE TIME FOR ACTION.

Congress is soon to convene in extra session for the consideration of subjects deemed of great importance to the country. Though it is well understood that the scope of the matters to be dealt with is to be limited, there is one question upon which legislation has apparently not been contemplated, and upon which wise action would do much to "reassure business." One acute cause of business anxiety at this moment is the fear that through a failure of the Federal Erdman Act arbitration of railway labor disputes may break down and plunge large areas or perhaps the whole country into the chaos and disaster of a strike. This bulletin is issued in the hope that it may be helpful in crystallizing public sentiment to the end that Congress may be impressed with the fact that no legislation is of more importance at this time than to create machinery of arbitration which will guard as effectively as possible against the occurrence of strikes involving interruption to railway operation.

GEO. A. POST,
President Railway Business Association.

CONGRESS AT THE EXTRA SESSION SHOULD MAKE ARBITRATION PROCEDURE SO ACCEPTABLE TO EMPLOYEES AND RAILWAY MANAGERS THAT ADJUSTMENT OF DISPUTES WILL BE ASSURED WITHOUT INFLICTING INTERRUPTION OF TRAIN SERVICE UPON MILLIONS OF NEUTRALS.

The country's bare escape during recent months from railway strikes tying up traffic throughout territory containing in some instances nearly half the

whole population makes it imperative to remove at once the possibility of such a situation in future.

What would occur if any one of the classes of labor in the operation of railway trains over such an area should quit work for any considerable time is beyond anything in American experience. It would paralyze commerce and bring hunger and misery to millions.

There is no reason to doubt that demands for increase of wages or more favorable working conditions will frequently take the form of concerted action by employees on many lines at once. The allegation as to cost of living upon which railway employees have relied for public sympathy in their demand for enlarged compensation has been made simultaneously all over the country. The consequent concurrent demand which has developed the large-scale disputes gives every appearance of having become a permanent feature in such negotiations. The eastern conductors and trainmen have announced a purpose to press demands after the firemen's case is concluded.

IMMEDIATE ACTION DESIRABLE.

The urgency of the situation leads the Railway Business Association to go outside its main function of conciliation between railways and the public and seek to arouse the public, the railway employees, and the railway managers to cooperation and the President and Congress to action at the extra session. The Federal Erdman Act, through which until recently strikes causing interruption to train service have been almost wholly prevented, has all but broken down at the point where, mediation failing, arbitration was attempted in the large-scale dispute involving many roads at once. The eastern engineers' case was arbitrated outside the act. In the eastern firemen's case the roads agreed to arbitration under the act only after earnest protest and because they believed this to be the only means of averting a strike. The firemen through their officials went on record as favoring amendments which would render the act more applicable to present conditions.

The Erdman Act should be amended forthwith or legislation substituted for it providing a form of voluntary arbitration so little open to valid objection as to deprive disputants of all reasonable excuse for declining arbitration under the law. To postpone remedial legislation is to invite widespread and, perhaps, national disaster at any moment.

DEFECTS OF THE ERDMAN ACT.

While effective in averting strikes through mediation in controversies of whatever extent, the Erdman Act is unsatisfactory in large-scale disputes if they reach the arbitration stage.

Arbitration outside the act, on the other hand, as tried in the engineers' case, was declined by the firemen on the ground that they desired the decision to be an award, without recommendation of new legislation, and believed the act would so restrict the findings, and also on the ground that the testimony should be taken under oath, as provided by the act.

What are the defects of the Erdman Act?

Size of board.—The act provides for a board of but three arbitrators, two of whom represent the respective parties. All concerned urge that a decision involving many roads over a wide area, many thousands of employees, and many million dollars annually should be rendered by a board having more neutrals than one. Provision should be made in the act for fixing upon a larger number when desired. An increase in the proportion of the number of neutral arbitrators to partisans will bring more minds to bear upon the many questions arising in large areas and tend to promote equity in the decisions.

Time for investigation.—The act limits the time for the investigation to 30 days. It is said that in so short a time the investigation is likely to result in little more than a splitting of differences. The time for the investigation should be made elastic.

Statistics.—If statistics and other data now available are unfitted for this purpose, machinery should be established for standardizing, collecting, keeping, and furnishing information which will meet the need.

Scope of those affected.—The statute now affects only employees engaged in train service—engineers, firemen, conductors, trainmen, yard and switch men, and telegraphers. Other classes frequently appeal to the Government mediators, and their organizations have asked that the law be extended to include

them. Some of the most serious strikes affecting large territory have been those of shopmen and others not engaged in train service. The act should be made applicable to all railway employees.

Mediators.—It is urged that the burden of mediation, already heavy, will increase as time goes on, especially if the act is extended to include all classes of railway employees. The machinery of mediation should therefore be made adequate to the enlarging demands upon it. It is also pointed out that only a few Federal officers are ex officio eligible to appointment as mediators. The mediator has the function when the representatives of the parties fail to agree of appointing neutral arbitrators. There would always be the temptation in one quarter or another when a vacancy arose in a position the occupant of which is eligible as mediator to urge candidates primarily because of their supposed predisposition in labor disputes. Nor is there any assurance that future incumbents, however competent in the offices designated in the statute, will by temperament and training be qualified for the extremely difficult work of mediation. Eligibility to appointment as a mediator having the function of appointing neutral arbitrators should be made to depend as completely as possible upon personality and experience for the specific function of mediation.

LET ALL COOPERATE.

Railway managers, railway employees, and the public should cooperate to obtain legislation which will place them squarely on the side of industrial peace and public convenience and accomplish some progress in the direction of equity for all concerned in the settlement of wage disputes.

To save all the people from the waste and the misery of strikes is so imperative that it would seem that the President and the leaders in Congress might well include in their legislative program for the forthcoming extra session consideration of appropriate measures for the strengthening and improvement of the machinery for arbitration in railway labor controversies.

RAILWAY BUSINESS ASSOCIATION.

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Minneapolis Steel & Machinery Co.
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More-Jones Brass & Metal Co.
Morse Twist Drill & Machine Co.
Mott (J. L.) Iron Works.
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Nathan Manufacturing Co.
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Pickands, Mather & Co.
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United States Metallic Packing Co.
United Supply & Manufacturing Co.
Walpole Tire & Rubber Co.
Walsh (P. T.).
Warner & Swasey Co.
Weir Frog Co.
Welsbach Co.
Western Electric Co.
Western Railway Equipment Co.
Western Wheeled Scraper Co.
Westinghouse Air Brake Co.
Westinghouse Church Kerr & Co.
Westinghouse Electric & Manufacturing Co.
White Enamel Refrigerator Co.
Whiting Foundry Equipment Co.
Winston Bros. Co.
Wood (Guilford S.).
Worth Bros. Co.
Wyckoff Pipe & Creosoting Co.

TO STRENGHTEN RAILWAY LABOR ARBITRATION LAW—EDITORIALS URGING IMMEDIATE ACTION.

QUOTATIONS FROM THE PRESS COMPILED BY THE RAILWAY BUSINESS ASSOCIATION.

Thirty-two publications in 13 States and aggregating 2,240,305 circulation as rated in standard lists.

[Chicago Daily News.]

It is certain that the Erdman Act has proved a valuable instrument for the prevention of strikes on the Nation's railroads. The public knows well the harm that would come from a strike, crippling operations on any large number of the common carriers. However, the act is not wholly satisfactory either to the railroad managers or their employees. This was emphasized a few weeks ago in the negotiations between the managers and the firemen on 54 eastern railroads. It is asserted by the Railway Business Association that the size of the arbitration board should be increased. As it is now constituted it has one member for each party to the dispute and the third chosen by the other two. Another suggestion is that the time limit of 30 days now allowed for investigation be changed, since this period may at times prove insufficient. The time for investigation, it is asserted, should be made elastic. It is proposed also that machinery be established for "standardizing, collecting, keeping, and furnishing information" to meet the need for accurate statistics and other data. The excellent suggestion is offered that "eligibility to appointment as a mediator having the function of appointing neutral arbitrators should be made to depend as completely as possible upon personality and experience for the specific function of mediation."

When these main proposals have been thoroughly discussed by railroad managers and railroad workers, Congress ought to be in a good position to strengthen a law which has already proved its inherent merit. This ought to be done at the present extra session.

[New York Globe.]

The obvious thing to do is to amend the Erdman Act at the extra session of Congress in the way of bringing more neutrals to the arbitration boards and in allowing, when needed, more time for investigation. Congress should take time enough from the tariff question to remove the admitted defects of the Erdman law.

[St. Louis Times.]

We believe President Wilson would find a rare opportunity to put some of his high and well-considered ideas into practical form if he could find time and occasion during the special session to take up the matter of more effective arbitration.

[Harrisburg (Pa.) Telegraph.]

The Erdman Act, which has been the chief bulwark against railway strikes to date, has all but broken down on several recent occasions. Unless its defects are remedied, "widespread, and perhaps national, disaster" may result.

[New York Tribune.]

The Erdman Act should be amended to correspond with modern ideas. Arbitration by a larger board would be fairer to the public and more acceptable to the railroads and to their men.

[Buffalo (N. Y.) Commercial.]

It is recognized, of course, that the scope of matters to be considered at the extra session of Congress will be limited. But the need of reassuring business and of averting all possible danger from this source in the future is ample excuse for including in the legislative program at Washington this spring consideration of the arbitration law.

[Review of Reviews.]

The Erdman Act ought to be so amended as to provide for a larger number of arbitrators.

[American Paint and Oil Dealer.]

Shippers and the general public have a deep interest in this matter, for a railroad strike may easily become a national business disaster.

[New York Evening Post.]

Defects in the composition of the arbitrating board, as also hampering limitations upon the scope and time of its inquiries, should be removed. If we are to have this instrument for adjusting industrial disputes, everybody will concede that it ought to be made as perfect as possible.

[Buffalo (N. Y.) Express.]

The proper amendment of this act would deprive the disputants of all reasonable grounds for refusing arbitration. No union leaders and no railroad managers would dare to face public criticism by declining to arbitrate under an amended Erdman Act.

[Brooklyn (N. Y.) Eagle.]

The subject is well worthy of a place on the special-session calendar, the more so as it should not take long to dispose of it. Calamity may come in any event, but no effort to avert it should go by default.

[Philadelphia Evening Telegraph.]

The strike of tens of thousands of railroad employees, operating in concert, has become a menace in the public eye, for which some remedy is demanded. The time to prepare this remedy is now, not following a disastrous conflict which might easily have been averted.

[New York Journal of Commerce.]

Of late the principal complaint against the Erdman Act has not been based on the fact that it did not apply to enough industries, but has been founded upon the alleged defective character of the mechanism it set up for the management of those arbitrations which it provided for. In the railroad arbitration now in progress the roads were critical of the terms of the law, because of the short and necessarily inadequate time allowed for the consideration of the disputes before the arbitration board and because of the fact that so small a board—consisting of three members only—had the power to decide questions involving so much money. The labor men have not been satisfied with the way in which the arbitrators were picked out and have been desirous of improving the terms of the act.

[Salt Lake City (Utah) Evening Telegram.]

When the country as now constituted depends altogether on transportation, and the great cities, because of that dependence, never keep more than a week's provisions ahead, a destruction of railroads or a strike that would hold up railroads would be followed almost instantly by sore distress and in many cases starvation among the people crowded in the great cities.

[Leslie's Weekly.]

There is a feeling of anxiety in the business world and railroad circles over the possibility of an appalling general strike through the failure of the Erdman Act to meet the situation. While the extra session of Congress will consider only a limited number of questions deemed of great importance, an amendment to the Erdman Act is a matter of prime importance at this time. An amendment that would insure more adequate and equitable consideration of the interests of the public and that would guard as effectively as possible against the occurrence of railroad strikes would give the whole business world much-needed assurance.

[Sioux Falls Argus-Leader.]

We hope that Congress will not adjourn before it undertakes such amendment of the Erdman Act as will make it a workable thing. It is important that this should be done at the present session instead of at the regular session, for the

more promptly it is done the less danger of the waste of another strike. To neglect the amendment of this law to some more convenient time is like the postponement of taking out fire insurance. Your property may burn before you get around to it. In such cases as this delays are truly dangerous.

[Middletown (N. Y.) Daily Argus.]

Either the Erdman Act should be amended or some other measure substituted for it that would be entirely shorn of any valid objections that might in anywise give a disputant a reasonable excuse for declining to accept arbitration under it. A railroad strike in these days is so far-reaching and disastrous in its effects upon all concerned that both managers and employees, to say nothing of the general public, must devoutly desire that some satisfactory court of arbitration shall be instituted whose edicts shall be absolutely just and unquestioned.

[Springfield (Ohio) Sun.]

Employees and operators of the great railroad systems of the country are of one mind as to the necessity of amending the Erdman Act so as to make impossible a strike on any of the great carriers of intra and interstate business.

[Oakland (Cal.) Tribune.]

It is to be hoped Congress will amend the Erdman arbitration act at a reasonably early date. The Erdman Act has utterly failed to accomplish the end it was intended to serve, and the need of some better digested measure that will avert railway strikes becomes more pressing with time. Under existing conditions a general tie-up of railway traffic is likely to occur at any time. A paralysis of our transportation system would be disastrous. It is impossible to estimate what the consequences would be. Every class in every section would feel the effects. Grave disorders and much suffering would inevitably result. What is wanted is a substitute for the Erdman Act providing for a voluntary form of arbitration so little open to valid objection as to deprive disputants of all reasonable excuse for refusing to arbitrate under the law. The menace of strikes must be averted.

[New York World.]

The settlement of the dispute between the firemen and the railroads again emphasizes the necessity of amending the Erdman Act.

[York (Pa.) Dispatch.]

If amendment of this law can make it better effective to insure amicable settlement of labor disputes that might otherwise result in interference with the free movement of railroad traffic, then the law should be amended as soon as possible.

[Arizona Gazette.]

If such a bill can be prepared and introduced without any opposition, it may be possible to have it acted on at the present short, or extra, session of Congress without interfering with the tariff or currency legislation. If such a happy event can be brought about, it would certainly meet with the approval of the public.

[New York Press.]

After it finishes with its tariff business—anyhow, before it adjourns—Congress ought to see if it can not change this act into some more satisfactory form. This work ought not to await the regular session of Congress. New disputes between the railroad managers and their employees are already on the way.

[St. Louis Post-Dispatch.]

The law should have a thorough overhauling. The public may have need of it at any moment to avert great loss and inconvenience.

[La Porte (Ind.) Herald.]

The President and Congress can not do better than favor and urge consideration of appropriate measures for the strengthening and improvement of the machinery for arbitration in railway labor controvesies.

[Mobile (Ala.) Item.]

To postpone remedial legislation is to invite widespread disaster at any moment.

[Pittsburgh Gazette Times.]

It was hoped action could be secured at the extra session of Congress, and if it were possible to obtain an agreement of all parties in that body to take up the subject and dispose of it without undue controversy and prolonged debate this would be well, as the matters at issue are of importance to the whole public. Recent strikes, as well as difficulties encountered in warding off extensive strikes east and west, which might have paralyzed the railroad business, emphasize the necessity of removing defects in the only statute applying to such cases.

[Buckingham Daily Record, Harrisburg, Pa.]

The object of legislation should be to minimize the differences between classes and provide for the settling of disputes economically, speedily, justly, and conclusively, and so as to subserve the best interests of the public at large. If the present laws do not so provide, Congress should act promptly and pass such laws as will provide a remedy.

[Rochester (N. Y.) Democrat and Chronicle.]

Whether Congress will take up this urgent matter at the extra session remains to be seen, but its direct bearing on the welfare of the country makes it a question of almost predominating importance and interest.

[Augusta (Ga.) Chronicle.]

The great public will approve any and every proposition having for its purpose the arbitration of disputes between labor and capital.

[Cedar Rapids (Iowa) Gazette.]

The public is inclined to consider the question from the standpoint that most railroad strikes having been settled by arbitration, the danger of such labor difficulties is reduced to a minimum. But the country has been perilously near a number of wage conflicts that would have been a serious menace to business. If the arbitration law can be strengthened, certainly the strengthening should be done.

[Albany (N. Y.) Argus.]

Many of the stanchest supporters of the Erdman law concede that it is not perfect. It is a step in the right direction, and has worked well. We can see no objection to Congress considering the amendments proposed and acting on them as the majority wills.

[Kansas City Star.]

A strike that would tie up railroads generally would be a national calamity. The whole country is interested in doing everything possible to avert such an event. Congress has an opportunity now to do an important public service in amending the Erdman Act to make it more nearly adequate to existing conditions.

Business Men Urging Immediate Strengthening of Railway Labor Arbitration Law.

Petition signed in Chicago and New York, with names of signers, all heads of manufacturing enterprises.

To Senators and Representatives in Congress:

The undersigned manufacturers respectfully urge upon you the necessity of legislation at the extra session designed to make the Federal machinery for the arbitration of railway labor disputes acceptable to both sides.

The conductors and trainmen's negotiation presents an emergency. Serious objections are raised to the Erdman Act. All reasonable excuse for declining

arbitration and precipitating a strike to involve half the country in loss and misery should be removed by strengthening the law.

As employers whose business would be interrupted and whose employees would suffer grievous loss, wretchedness, and perhaps death in case of a large-scale strike, we urge action at the earliest moment consistent with thorough consideration.

Chicago:

Adams & Westlake Co., Ward W. Willits, president.
Addressograph Co., J. B. Hall, secretary.
Ajax Forge Co., R. Ortmann, president.
American Envelope Co., Richard P. Murry, president.
American Sand & Gravel Co., N. C. Fisher, president.
American Shop Equipment Co., Jos. B. Terbell, president.
American Steel Foundries, R. P. Lamont, president.
Arnold Co., Bion J. Arnold, president.
Austin, W. B. & Co., W. B. Austin, president.
Automatic Electric Co., H. A. Harris, vice president.
Barnes, A. R., & Co., A. R. Barnes, treasurer.
Barrett, M. A., Co., M. A. Barrett, president.
Beardslee Chandelier Manufacturing Co., F. R. Farmer, secretary.
Bell & Zoller Mining Co., H. E. Bell, president.
Beoningham & Seaman Co., H. Beoningham, president.
Birkett Coal & Coke Co., C. A. Birkett, president.
Blakely-Oswald Printing Co., John I. Oswald, president.
Bosley, D. W., Co., Edw. F. Bosley, president.
Buda Co., L. M. Viles, treasurer (Harvey, Ill.).
Burley & Tyrell Co, W. O. Coleman, president.
Camel Co., J. M. Hopkins, president.
Central Electric Co., George A. McKinlock, president.
Ceresit Waterproofing Co., P. H. Hansen, vice president.
Chase & Sanborn, Carleton Moseley, member of firm.
Chicago Bridge & Iron Works, George Horton.
Chicago Car Heating Co., Egbert H. Gold.
Chicago Car Seal Co., L. W. Fuller, president.
Chicago Fire Brick Co., W. J. Gilbert, president.
Chicago Malleable Castings Co., John T. Llewellyn, vice president.
Chicago Paper Co., W. E. Gillett, president.
Chicago Pneumatic Tool Co., W. O. Duntley, president.
Chicago Portland Cement Co., Thomas Sutton, president.
Chicago Railway & Mill Supply Co., A. D. Gillespie.
Chicago Steel Tape Co., L. A. Nichols, president.
Chicago Railway Equipment Co., R. B. Leigh, president.
Chicago Varnish Co., O. H. Morgan, president.
Chicago, Wilmington & Vermillion Coal Co., T. A. Lemmon, president.
Childs, S. D., & Co., A. H. Childs, president.
Clow, J. B., & Sons, W. E. Clow, president.
Cohen & Co., J. Cohen.
Colles, E. C. T., Co., Philip J. Sharkey, president.
Consumers Co., V. F. Upham, president.
Cozzons & Beaton, F. B. Cozzons, president.
Curtain Supply Co., W. H. Forsyth, general manager.
Davis, G. M., Regulator Co., George C. Davis, president.
Dearborn Chemical Co., R. F. Carr, president.
Dee, William E., Clay Manufacturing Co., William E. Dee, president.
Deeves, Griffin H., & Co., Griffin H. Deeves, president.
Donaldson & Fisher Co., Percy Donaldson, president.
Durand Steel Locker Co., Keith Spalding, president.
Edgar Allen, American Manganese Steel Co., S. T. McCall.
Electric Appliance Co., W. W. Low, president.
Elgin, Joliet & Eastern Railway, A. F. Banks, president.
Eureka Coal & Dock Co., R. H. Gruschow, president.
Faulkner & Ryan Co., Thomas H. Faulkner, president.
Fitzhugh-Luther Co., C. H. Fitzhugh, president.
General Railway Supply Co., H. U. Morton, vice president.
Gordon Iron Co., M. Gordon, secretary.
Green Engineering Co., P. Albert Poppenhusen, president.
Griffin Wheel Co., F. L. Whitcomb, vice president.
Grip Nut Co., J. P. Hibbard, treasurer.

Chicago—Continued.
Harty Bros. & Harty Co., G. M. Harty, president.
Heath & Milligan Manufacturing Co., Ernest H. Heath, general manager.
Heaton & Hubbell (Inc.), W. B. Heaton, president.
Hettler, Herman M., Lumber Co., H. H. Hettler, president.
Hewitt Manufacturing Co., E. C. Tourtelot, secretary and treasurer.
Hibbard, Spencer, Bartlett & Co., Henry Bencke, manager.
Hines, Edward, Lumber Co., L. L. Barth, vice president.
Hine-Watt Manufacturing Co., L. H. Hine, president.
Homer Roberts Manufacturing Co., Chas. A. Betterff, manager.
Hough, William B., Co., William B. Hough, president.
Humiston, Keeling & Co., F. Keeling, jr., president.
Hunt, Robert W., & Co.
Hyman-Michaels Co., Joseph Hyman, president.
Illinois Car & Manufacturing Co., P. H. Joyce, president.
Illinois Engineering Co., Robert L. Gifford, president.
Illinois Malleable Iron Co., J. E. Bullock, secretary.
Independent Pneumatic Tool Co., J. D. Hurley, vice president.
Inland Steel Co., G. H. Josies, vice president.
International Regulator Co., A. H. Woodward, president.
International Tag Co., P. W. Henning, vice president and general manager.
Joliet Railway Supply Co., O. E. A. Laughlin, president.
Jones, Morgan T., & Co., Morgan T. Jones, president.
Joslin, A. D., Manufacturing Co., E. C. Buehur, secretary and treasurer.
Joyce Watkins Co., W. T. Watkins, president.
Karpen, S., & Bros., Adolph Karpen, secretary.
Kellogg Switchboard & Supply Co., L. D. Kellogg, president.
Leach, L. D., & Co., C. C. Orange, treasurer.
Love Brake Shoe Co., C. W. Ambrust, president.
Marshall-Jackson Co., George E. Marshall, president.
Merchants Steel & Supply Co., W. K. Kenly, president.
Metal Specialties Manufacturing Co., L. W. Golder, secretary.
Miller Chemical Engine Co., J. M. Miller, manager.
Morden Frog & Crossing Works, Irving T. Hartz, president.
Mudge & Co., Burton W. Mudge, president.
National Ticket Case Co., L. J. Blades, secretary and treasurer.
Naugle Pole & Tie Co., J. W. Benham, secretary and treasurer.
Neahr, M. J., & Co., Albert H. Veeder, jr., president.
Nichols, Geo. P., & Bros., S. F. Nichols, partner.
Nickolas, G. J., & Co., G. J. Nickolas.
Norris Klister Co., N. M. Klister, president.
Northwestern Electric Co., Samuel H. Martin, president and treasurer.
Norton Door Check Co., Lewis C. Norton, president.
Nubian Paint & Varnish Co., H. E. Hamilton, vice president.
Ohio Iron & Metal Co., M. Dreyfus, president.
O'Neil, J. G.
Otis Elevator Co., William D. Baldwin, president.
Otley Manufacturing Co., Benjamin F. Otley, president.
P. & M. Co., Philip A. Moore, secretary.
Pease, C. F., Co., C. F. Pease, president.
Perolin Co. of America, J. I. Kopperl, president.
Pettibone, Mulliken Co., A. H. Mulliken, president.
Poole Bros., George A. Poole, jr., vice president.
Porter, Chas. M., Co., Charles M. Porter, president.
Pyle National Electric Headlight Co., J. Will Johnson, general manager.
Railroad Supply Co., Henry S. Hawley, president.
Railway Supply & Curtain Co., Plato G. Emery, president.
Rand, McNally & Co., H. B. Clow, president.
Rittenhouse & Embree Co., M. F. Rittenhouse, president.
Rogers & Smith Co., John O. Smith, jr., treasurer.
Ryerson, Jos. T., & Son, S. T. Hendee, secretary.
Salisbury, W. H., & Co., C. R. Blanchard, president.
Sanford Manufacturing Co., William Rodiger, vice president.
Scully Steel & Iron Co., A. B. Scully, president.
Sellers Manufacturing Co., E. M. Kerwin, treasurer.
Sellers Manufacturing Co., J. M. Sellers, vice president.

Chicago—Continued.
Shea, Smith & Co., George H. Jenkins, president.
Sheldon, G. W., & Co., George W. Sheldon, president.
Shepard, Henry O., Co., E. W. Beedle, president.
Smith, F. P., Wire & Iron Works, E. P. Smith, proprietor.
Snow, T. W., Construction Co., T. W. Snow, president.
Soper Lumber Co., James S. Merrill, treasurer.
Sprague, Smith Co., Ames R. Smith, president.
Sprague, Warner & Co., A. A. Sprague, second vice president.
Standard Car Truck Co., J. C. Barber.
Standard Forgings Co., George E. Van Hagen.
Stebbins Hardware Co., Fred J. Stebbins, treasurer.
Stevens, Charles G., Co., Charles G. Stevens, president.
Srtomberg, Allen & Co., Charles J. Stromberg, president.
Swift & Co., A. R. Fay.
Taylor, S. G., Chain Co., S. G. Taylor, jr., president.
Templeton, Kenly & Co. (Ltd.), Walter B. Templeton.
Thordarson Electric Manufacturing Co., J. A. Berman, treasurer.
Tinsley Railway Supplies & Equipment Co., Robert Tinsley, president.
Tousey Varnish Co., C. A. Tousey, president.
Tyler & Hippach, A. S. Tyler, president.
Union Draft Gear Co., J. R. Cardwell, president.
United States Blue Print Paper Co., John C. Nidetzky, president.
Van Schaack, Peter & Sons, R. H. Van Schaack, president.
Viscosity Oil Co., W. G. Simmons, president.
Vissering, Harry, & Co., Harry Vissering, president.
Wachs, E. H., Co.
Western Fire Appliance Works, L. H. Des Isles, treasurer.
Wes'ern Steel Car & Foundry Co., N. S. Reeder.
Whiting, George, Co., George Whiting, president.
Whiting Foundry & Equipment Co., T. S. Hammond. (Harvey, Ill.)
Winslow, Horace L., Co., H. L. Winslow, president.
Wood, Guilford S., Guilford S. Wood.
Woods, Edwin I., & Co., Edwin I. Woods.
Worcester, C. H., Co., C. H. Worcester, president.

New York:
Alberger Pump & Condenser Co., George Q. Palmer, president.
American Arch Co., Le Grand Parish, president.
American Brake Shoe & Foundry Co., Otis H. Cutler, president.
American Brake Shoe & Foundry Co., W. G. Pearce, vice president.
American Car & Foundry Co., Frederick H. Eaton, president.
American Hard Rubber Co., E. Achelis, president.
American Locomotive Co., W. H. Marshall, president.
Armspear Manufacturing Co., F. D. Spear, president.
Ashcrof' Manufacturing Co., A. J. Babcock, president.
Atlas Preservative Co., R. N. Chipman, general manager.
Bird-Archer Co., H. V. Bootes, secretary.
Boyle, John, & Co. (Inc.), F. R. Thorns, secretary.
Brady Brass Co., E. M. Brady, president.
Brander Co., T. W. Brander, president.
Bridgeport Brass Co., F. J. Kingsbury, president. (Bridgeport, Conn.)
Bridgeport Chain Co., Gregory S. Bryan, treasurer. (Bridgeport, Conn.)
Bronze Metal Co., Alex Turner, vice president and general manager.
Buffalo Brake Beam Co., S. A. Crone, president.
Commercial Acetylene Railway Light & Signal Co., Oscar F. Ostby general sales agent.
Cooper Hewitt Electric Co., Charles B. Hill, vice president and general manager. (Hoboken, N. J.)
Debevoise Co., George Debevoise, president. (Brooklyn, N. Y.)
Devoe, F. W., & C. T. Raynolds, J. Seaver Page, president.
Dielectric Co. of America, O. T. Hungerford, general manager. (Belleville, N. J.)
Dixon, Joseph, Crucible Co., George T. Smith, president. (Jersey City, N. J.)
Dressel Railway Lamp Works, F. W. Dressel, president.
Duplex Metals Co., S. C. Munez, vice president.

New York—Continued.
Edison, Thos. A. (Inc.), W. Maxwell, second vice president. (Orange, N. J.)
Electric Railway Journal, Hugh M. Wilson, vice president.
Fabric Fire Hose Co., W. T. Cole, president.
Flower Waste & Packing Co., F. D. Waller, secretary and general manager.
Forker, C. A., Co., C. A. Forker, president.
Foster Engineering Co., J. M. Foster, president. (Newark, N. J.)
Gold Car Heating & Lighting Co., Edw. E. Gold, president.
Gould Coupler Co,, F. P. Huntley, vice president.
Heyden Chemical Co., George Simon, vice president.
Hildreth Varnish Co., P. F. Jennings, president.
International Steam Pump Co., A. B. Dickson, president.
Kieley & Mueller, Timothy Kieley, member firm.
Knowles, C. S., W. H. Tantum, New York manager.
Locomotive Stoker Co., W. S. Bartholomew, president.
Locomotive Superheater Co., George L. Bourne, vice president.
MacArthur Bros. Co., A. F. MacArthur, president.
Magnus Metal Co., H. H. Hewitt, president.
Manning, Maxwell & Moore (Inc.), A. J. Babcock, first vice president.
Nathan Manufacturing Co., Edw. S. Toothe, vice president.
National Lock Washer Co., W. C. Dodd, president. (Newark, N. J.)
Newhall Chain, Forge & Iron Co., Henry B. Newhall, jr., vice president.
New York Air Brake Co., C. A. Starbuck, president.
New York Leather Belting Co., Charles E. Aaron, president.
New York Switch & Crossing Co., W. C. Wood, president. (Hoboken, N. J.)
New York & New Jersey Lubricant Co., C. A. Matthews, president.
Pantasote Leather Co., G. W. Outerbridge, treasurer and managing director. (Passaic, N. J.)
Pitt Car Gate Co., William R. Pitt, president.
Positive Lock Washer Co., John B. Ross, secretary. (Newark, N. J.)
Power Specialty Co., E. H. Foster, vice president.
Prentiss Tool & Supply Co., H. Prentiss, president.
Prince Manufacturing Co., W. J. Colwell, secretary.
Railway Steel Spring Co., M. B. Parker, secretary.
Reade Manufacturing Co., Charles H. Reade, manager. (Hoboken, N. J.)
Revolute Machine Co., J. V. McAdams, president.
Royal Equipment Co., S. Simpson, president. (Bridgeport, Conn.)
Rumsey Pump & Machine Co., L. D. Compson, proprietor.
Safety Car Heating & Lighting Co., R. M. Dixon, president.
Schaeffer & Budenberg Manufacturing Co. (Brooklyn, N. Y.)
Schapirograph Co., F. C. Gottschalk, president.
Sellew, T. G., Edw. P. Francis, of firm.
Shaw Electric Crane Co., A. J. Babcock, president.
Snow Steam Pump Co., A. B. Dickson, president.
Standard Coupler Co., A. P. Dennis, vice president.
Standard Heat & Ventilation Co., J. F. Deems, president.
Standard Manufacturing Co., C. A. Hungerford, treasurer.
Stewart, James & Co. (Inc.), A. M. Stewart, president.
Tagliabue, C. J., Manufacturing Co., C. J. Tagliabue, president. (Brooklyn, N. Y.)
Tilden, B. E., & Co., J. M. Odenheimer, president.
Underwood Typewriter Co., Charles W. Hand, vice president.
Union Stove Works, Edw. F. Hill, president. (Peekskill, N. Y.)
U. S. Light & Heating Co., J. Allen Smith, vice president and general manager.
U. S. Metal & Manufacturing Co., B. A. Hegeman, jr., president.
Van Horne, D. A., & Co., D. A. Van Horne, jr., member of firm.
Vinton Colliery Co., Warren Delano, president.
Volkhardt Co., William Volkhardt. (Stapleton, N. Y.)
West Disinfecting Co., George L. Lord, manager of railroad department.
Westinghouse, Church, Kerr & Co., John F. Wallace, president.
Wiarda, John C., & Co., John C. Wiarda. (Brooklyn, N. Y.)
Worthington, Henry R., A. B. Dickson, president.

ADDITIONAL STATEMENT OF SETH LOW, PRESIDENT THE NATIONAL CIVIC FEDERATION.

Mr. Low. Mr. Chairman, I wish I might adequately express not only my own feeling and appreciation of the patient hearing that you have given to us but that of all others interested in this measure. I do thank you very heartily, indeed.

The part of the National Civil Federation in this undertaking has been to bring together the railroads and the railroad brotherhood, and the bill represents, first of all, the opinion of Judge Knapp and Dr. Neill, who have had experience with the Erdman Act, and afterwards the agreement of the railroads and of the railroad employees. I think the Civic Federation has had next to nothing to do with the actual shaping of the bill. We have done what we could to make the bill possible by bringing the two parties together, but it is really their bill.

I feel exceedingly sorry that this question that has been raised by the Secretary of Labor—very properly from his point of view—is present at all, because what we are seeking in this measure is emergency action. We have an emergency to deal with. The proposition which the Secretary has raised is not an emergency proposition, but it goes to large general principles of governmental action.

Secretary WILSON. Mr. Low, will you permit a question?

Mr. Low. Certainly.

Secretary WILSON. Is it not a fact that the emergency grows out of the limitations of the number of arbitrators provided by the Erdman Act, and not out of the personnel of those who administer the Erdman Act?

Mr. Low. Yes; I think so. I think if we could keep the same personnel the question of organization would be comparatively indifferent, Mr. Secretary, and yet you have heard from Dr. Neill and Judge Knapp and others why they prefer this bill.

All that I wish to say is that if this bill is passed, we have a reasonable certainty that railroad disturbances in this country in the near future will not take place, because the railroad presidents who are taking part in framing this bill and the organizations that have taken part in it, and in several instances have formally approved it, will operate under it, and therefore if this bill is passed we shall avoid whatever emergency is coming, and you yourselves have heard how serious that emergency may be.

What I wished to say was in regard to the question that the Secretary of Labor has presented, that if it is in any way possible for me in cooperation with him to prepare an amendment to this bill that will meet both points of view I shall be only too glad to do it. I doubt if it is at all practicable to do it in time to meet this emergency, but I think if this bill is passed as an emergency measure that question may be taken up and considered on its merit in the most friendly way.

At any rate, so far as the National Civic Federation is concerned, we should be very glad to give our good offices to that end. I am only afraid if that question is insisted upon now, if you get a bill that is more acceptable from some points of view to the Government, it might not be used. Of course, I have no authority to say it would

not be. Is it not better in the situation with which we are confronted to pass a bill which we know perfectly well will prevent industrial strikes on the railroad systems than any other way suggested?

I do not suppose that this bill is the last word to be said on this matter. You have got in it the experience up to this time. We will have new experiences under this act. What I suspect will take place if this bill is passed is that the pending arbitration will be held under its terms. If the gentleman appointed as Commissioner of Mediation and Concilitation by the President proves to be personally well equipped for that office, such arbitrations will continue. If he does not, I do not think any more arbitrations will be held under this bill until his personality is welcome to both sides.

Secretary WILSON. Will you permit another question?

Mr. LOW. Certainly.

Secretary WILSON. If the Erdman Act was amended so as to broaden the scope or increase the numbers of the arbitrators, as proposed in this bill, would not that in itself meet the emergency, and the entire question of whether or not the commission should be rearranged could be dealt with without emergency considerations?

Mr. LOW. So far as the National Civic Federation is concerned, it would meet it perfectly, Mr. Chairman. I may be mistaken, but I understood Mr. Stone—I am not sure whether Mr. Willard also—to express their opinion that it would not, that these arbitrators or commissioners ought to be independent of any department. If the gentlemen on both sides will agree to accept it in the form that the Secretary suggests, nothing would be more agreeable to me; but I have no information that enables me to say that it will.

Secretary WILSON. What I wanted to find out is whether or not these gentlemen were of opinion that an emergency existed with regard to the personnel of the mediators under the Erdman Act—whether they consider that part of the emergency, or whether the emergency did not grow out of the fact, and solely out of the fact, that the board of arbitration provided by the Erdman Act was too small?

Mr. LOW. Yes; I think it is the size of the board which is fundamentally the question of emergency, Mr. Secretary. Mr. Willard suggests that through the resignation of Dr. Neill a vacancy exists in the office that would act upon this matter under the Erdman Act as it stands, and that those who have framed this bill think that a man more likely to succeed would be obtained under the terms of this proposed bill where the appointment would be made by the President himself and confirmed by the Senate.

Secretary WILSON. Is it not also true that under the Erdman Act that those who act as mediators are persons who are named by the President and confirmed by the Senate, and that the only difference there would be under the circumstances would be as to whether or not the Secretary of the department might suggest to the President the person who would act in that capacity?

Mr. LOW. I am not sure whether Mr. Stone is willing to speak upon this subject. If that amendment would be satisfactory to the parties concerned in this bill, I have no objection whatever.

The CHAIRMAN. I understand your position to be that anything is satisfactory to the Civic Federation that these two parties agree to. You want anything that they agree to to go through?

Mr. LOW. Yes, sir. I think it is a tremendously important moment in the industrial history of our country, not to say of the world. I do not believe that in any other civilized country you can see at this present day absolute unanimity on a subject like this between a large industry, like railroading, and its employees, other than in the United States. I do not believe that would happen anywhere else, and it seems to me unless there be very strong objections to what they propose, the Congress of the United States will give an immense impulse to the friendly arbitration of labor disputes, not only in the railroad world but by influence in all other parts of the labor world, by acting favorably upon these suggestions. I think it has very much more far-reaching consequences than simply to settle the pending controversy. If these gentlemen come together and settle on a bill unanimously and it is not passed, I think it will be profoundly discouraging. If it is passed, I think it will be profoundly encouraging.

As to this detail which the Secretary of Labor has raised, it would suit me just as well in the form he suggests as in this, but I have no authority to say that it will suit the railroad and the railroad brotherhood as well. What I do know is that they are willing to arbitrate under this bill, and therefore I hope very much that this bill may be passed and passed as an emergency measure in Congress, and that the Secretary and I may cooperate later to see whether we can not put the bill, in the respect which he now criticizes it, into a form which everybody concerned will be satisfied with. The fear is that if the attempt is made to do that now we shall not succeed because of the pressure of time. If the Congress accepts the Secretary's suggestion, it may or may not solve the problem. If they accept the suggestion submitted in this bill, I think it will absolutely avoid railroad difficulties in the United States in the near future.

Senator POMERENE. Mr. Chairman, I was going to suggest, in view of the question that was raised by Mr. Secretary Wilson, that there be incorporated in this record so much of the organic act creating the Department of Labor as pertains to his duties in connection with labor disputes.

The CHAIRMAN. That will be done.

The portion of the act referred to is as follows:

SEC. 8. That the Secretary of Labor shall have power to act as mediator and to appoint commissioners of conciliation in labor disputes whenever in his judgment the interests of industrial peace may require it to be done; and all duties performed and all power and authority now possessed or exercised by the head of any executive department in and over any bureau, office, officer, board, branch, or division of the public service by this act transferred to the Department of Labor, or any business arising therefrom or pertaining thereto, or in relation to the duties performed by and authority conferred by law upon such bureau, officer, office, board, branch, or division of the public service, whether of an appellate or revisory character or otherwise, shall hereafter be vested in and execised by the head of the said Department of Labor.

Mr. STONE. Mr. Chairman, if it would not be out of place, I should like to ask one question of Dr. Neill for the record, to make it a

matter of record. I am sure that my position is right, but I should like to ask Dr. Neill if he has ever understood that in any of these mediation cases he was ever under any bureau at all?

Mr. WEBB. He stated that this morning.

Mr. STONE. I beg your pardon. I was out a part of the time this morning. I never understood that he was under anybody. I thought he was absolutely free.

The CHAIRMAN. He stated that clearly this morning.

We are very much indebted to you, gentlemen, for the clear exposition you have given of this bill and for your attention. The committee will now adjourn.

(Thereupon, at 5.20 o'clock p. m., the committee adjourned.)